

UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA

ELOUISE PEPION COBELL, et al. .  
Plaintiffs, . Civil Action 96-1285  
v. .  
DIRK KEMPTHORNE, Secretary of the Interior, et al. . Washington, D.C.  
Monday, June 9, 2008  
1:37 p.m.  
Defendants. .  
.....

TRANSCRIPT OF TRIAL - AFTERNOON SESSION  
BEFORE THE HONORABLE JAMES ROBERTSON  
UNITED STATES DISTRICT JUDGE

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01:32:18PM 1 PROCEEDINGS  
01:39:01PM 2 THE COURT: Mr. Dorris?  
01:39:03PM 3 MR. DORRIS: Good afternoon, your Honor.  
01:39:03PM 4 THE COURT: Good afternoon.  
01:39:04PM 5 MR. DORRIS: If we're ready to begin, the plaintiff  
01:39:07PM 6 would call Ray Ziler.  
01:39:09PM 7 THE COURT: All right.  
01:39:27PM 8 COURTROOM DEPUTY: Do you solemnly swear that the  
01:39:29PM 9 testimony you should give to the Court in this case now on trial  
01:39:31PM 10 should be the truth, the whole truth, and nothing but the truth  
01:39:34PM 11 so help you God?  
01:39:35PM 12 MR. ZILER: I do.  
01:39:35PM 13 COURTROOM DEPUTY: Thank you. Please be seated.  
01:39:38PM 14 MR. DORRIS: Your Honor, in keeping with the way we  
01:39:56PM 15 conducted examinations in Phase 1.7, if I might take a moment to  
01:40:01PM 16 briefly tell you about Mr. Ziler's background and give you an  
01:40:06PM 17 overview of the testimony that we hope to elicit from him.  
01:40:09PM 18 THE COURT: Thank you. That would be helpful.  
01:40:11PM 19 MR. DORRIS: Mr. Ziler was the lead partner for Arthur  
01:40:15PM 20 Andersen on the first audit of BIA IIM trust operations in 1988  
01:40:20PM 21 and then for two more years in 1989 and 1990. Mr. Ziler joined  
01:40:27PM 22 Arthur Andersen in 1969 in Los Angeles and moved to help Arthur  
01:40:33PM 23 Andersen's now office in Albuquerque in 1984 where he still  
01:40:38PM 24 resides. After overseeing BIA's audits, he became the managing  
01:40:43PM 25 partner of Arthur Andersen's Albuquerque office, and at some

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01:40:48PM **1** point in the early '90s he had less of a day-to-day involvement  
 01:40:52PM **2** with Arthur Andersen's work that continued on the tribal trust  
 01:40:57PM **3** reconciliation that you heard about, and we will not be going  
 01:41:00PM **4** into that with him. He retired from Arthur Andersen in 1999 and  
 01:41:04PM **5** he is now partner with a local Albuquerque accounting firm of  
 01:41:09PM **6** about 150 people where he heads up a fifty-person division of  
 01:41:12PM **7** their audit and business consulting practice.  
 01:41:19PM **8** We are going to ask Mr. Ziler questions in connection  
 01:41:26PM **9** with the audit that had to do with the internal accounting  
 01:41:29PM **10** controls at BIA, focusing on three primary points: the lack of  
 01:41:35PM **11** reconciliation between treasury and BIA regarding the IIM funds,  
 01:41:41PM **12** the lack of reconciliation between components of BIA's own  
 01:41:47PM **13** accounting systems, and then third, BIA's weaknesses in  
 01:41:53PM **14** accounting both for receipts and disbursements, including its  
 01:41:58PM **15** vulnerability to misappropriation and fraud.  
 01:42:02PM **16** And I would expect the direct examination of Mr. Ziler  
 01:42:04PM **17** to last for approximately an hour, your Honor.  
 01:42:06PM **18** THE COURT: All right, sir.  
 01:42:08PM **19** MR. KIRSCHMAN: Excuse me, your Honor. Plaintiffs in  
 01:42:10PM **20** their witness list identified Mr. Ziler as an expert witness.  
 01:42:15PM **21** I'm not clear whether he's a fact witness testifying on the  
 01:42:19PM **22** events he recalls from his work with Arthur Andersen. That's  
 01:42:23PM **23** all I heard so far. I see no grounds to qualify him as an  
 01:42:28PM **24** expert, and if he is, I don't know what it's on.  
 01:42:30PM **25** MR. DORRIS: Your Honor, we did that in an abundance

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01:42:32PM **1** of caution because we found when you call a C.P.A. to talk about  
 01:42:35PM **2** the audit, sometimes people view questions as being eliciting  
 01:42:39PM **3** opinion, but it was asking them about opinions that they formed  
 01:42:43PM **4** at the time that they did the audit. I do not plan to tender  
 01:42:47PM **5** Mr. Ziler as an expert, but there may be some points where he's  
 01:42:53PM **6** talking about the opinions that he rendered on behalf of Arthur  
 01:42:57PM **7** Andersen at this time.  
 01:43:01PM **8** THE COURT: Let's see how the Q and A goes and deal  
 01:43:05PM **9** with it question by question.  
 01:43:06PM **10** MR. KIRSCHMAN: I appreciate the clarification, your  
 01:43:08PM **11** Honor.  
 01:43:08PM **12** MR. DORRIS: Thank you, your Honor.  
 01:43:08PM **13** RAY ZILER, WITNESS FOR THE PLAINTIFFS, SWORN  
 01:43:09PM **14** DIRECT EXAMINATION  
 01:43:09PM **15** BY MR. DORRIS:  
 01:43:09PM **16** Q. If you'd please state your name.  
 01:43:11PM **17** A. Raymond Ziler.  
 01:43:13PM **18** Q. Where do you live, Mr. Ziler?  
 01:43:14PM **19** A. Albuquerque, New Mexico.  
 01:43:17PM **20** Q. Can you adjust the microphone to where --  
 01:43:20PM **21** A. That is better?  
 01:43:21PM **22** Q. And you heard my brief description of your background. Was  
 01:43:29PM **23** that accurate?  
 01:43:30PM **24** A. It was accurate.  
 01:43:31PM **25** Q. Now, are you a C.P.A.?

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01:43:33PM **1** A. Yes, I am.  
 01:43:34PM **2** Q. And how long have you been a C.P.A.?  
 01:43:36PM **3** A. Since 1971.  
 01:43:42PM **4** Q. At our request have you recently reviewed the audits and  
 01:43:46PM **5** various reports that Arthur Andersen issued to BIA in connection  
 01:43:51PM **6** with the audits for the years 1988, '89, and '90?  
 01:43:54PM **7** A. Yes, I am.  
 01:43:55PM **8** Q. And generally refreshed your memory regarding that work?  
 01:43:58PM **9** A. Yes, I have.  
 01:44:02PM **10** Q. Have you also reviewed certain of the audit Arthur Andersen  
 01:44:06PM **11** work papers that were generated as part of those audits?  
 01:44:09PM **12** A. Yes. It's a very limited portion, but yes, I have.  
 01:44:11PM **13** Q. Based on the work that Arthur Anderson did and as you have  
 01:44:18PM **14** reviewed it recently, were the accounting systems then being  
 01:44:23PM **15** used by BIA reliable?  
 01:44:27PM **16** A. No, they were not.  
 01:44:28PM **17** Q. And were BIA's internal controls over its accounting and  
 01:44:34PM **18** financial systems adequate?  
 01:44:35PM **19** A. No, they were not.  
 01:44:37PM **20** Q. Why not?  
 01:44:37PM **21** A. We knew going into the initial engagement just through  
 01:44:45PM **22** dialogue with bureau management that they exposed internal  
 01:44:52PM **23** weaknesses and internal controls before we ever even started the  
 01:44:56PM **24** work. And what we generally found after engaging in the audits  
 01:44:59PM **25** was pretty much in the line with what we had been told, although

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01:45:03PM **1** as we learned more, I think we realized that they were worse  
 01:45:08PM **2** than we had originally realized.  
 01:45:10PM **3** Q. And how did BIA's internal controls compare to other  
 01:45:14PM **4** systems you've seen in your almost forty years of public  
 01:45:18PM **5** accounting?  
 01:45:18PM **6** MR. KIRSCHMAN: Objection; vague.  
 01:45:21PM **7** THE COURT: I'll allow it.  
 01:45:23PM **8** THE WITNESS: I have never encountered anything quite  
 01:45:30PM **9** like it. You know, the bureau was so decentralized. It had  
 01:45:36PM **10** over a hundred operating locations with no consistency from one  
 01:45:40PM **11** location to the next and systems that were out of sync with each  
 01:45:45PM **12** other. The remote sites, the agency sites were basically  
 01:45:50PM **13** uncontrolled.  
 01:45:51PM **14** BY MR. DORRIS:  
 01:45:53PM **15** Q. Okay. Now, as a result of the work that Arthur Andersen  
 01:46:01PM **16** did, was it able to express an unqualified opinion regarding  
 01:46:05PM **17** BIA's financial statements of the IIM trust funds?  
 01:46:08PM **18** A. No.  
 01:46:09PM **19** Q. And so when we talk about a qualified opinion, what does  
 01:46:17PM **20** that mean?  
 01:46:18PM **21** A. The original undertaking was to audit both the tribal and  
 01:46:23PM **22** the IIM accounts, and they were separate. They were within one  
 01:46:28PM **23** financial statement, but they were separate trust funds, and  
 01:46:30PM **24** they were -- the audit was for the entire trust assets and the  
 01:46:37PM **25** trust liability for each of those pools of funds, and so we

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01:46:42PM **1** attempted to perform an audit on the aggregate of the accounts  
 01:46:46PM **2** and also on the individual accounts within the fund, and because  
 01:46:51PM **3** of the lack of controls over receipts or disbursements and the  
 01:46:56PM **4** lack of agreement by anyone that we tried to confirm information  
 01:47:00PM **5** with, we were unable to really establish that anything was  
 01:47:04PM **6** correct other than certain assets that we could either confirm,  
 01:47:09PM **7** like securities, or that we could observe them. We actually saw  
 01:47:14PM **8** the documents, the original documents of a CD or something like  
 01:47:19PM **9** that, so that was the only area where we were able to really  
 01:47:23PM **10** opine. The rest of the audit was qualified.  
 01:47:26PM **11 Q.** When you say that was the only area you were able to opine,  
 01:47:30PM **12** was on the assets that you physically saw?  
 01:47:33PM **13 A.** Yes.  
 01:47:33PM **14 Q.** And --  
 01:47:34PM **15 A.** And we could not, we could not give an opinion on the  
 01:47:37PM **16** treasury cash account either because we could not get a  
 01:47:41PM **17** confirmation from Treasury as to the balance.  
 01:47:44PM **18 Q.** Okay. So there were certain of the assets that were you  
 01:47:47PM **19** not able to opine about?  
 01:47:49PM **20 A.** Correct.  
 01:47:52PM **21 Q.** Now, in each of the three audit years, did Arthur Andersen  
 01:47:55PM **22** provide a report on compliance and internal accounting controls?  
 01:47:58PM **23 A.** Yes.  
 01:48:00PM **24 Q.** And did the BIA accept those findings and recommendations  
 01:48:03PM **25** in each of those years?

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01:50:07PM **1** looking at the first full paragraph, about the second half of  
 01:50:10PM **2** that paragraph. Do you see it, Mr. Ziler?  
 01:50:12PM **3 A.** Yes.  
 01:50:12PM **4 Q.** And it refers to that the audits were conducted with the  
 01:50:16PM **5** knowledge of both the bureau and of Arthur Andersen that  
 01:50:21PM **6** material weaknesses in internal accounting controls existed and  
 01:50:24PM **7** that it was likely that violations of certain regulations  
 01:50:27PM **8** applicable to the management of the trust firms had occurred and  
 01:50:30PM **9** were continuing to occur, and if you'll read the rest of that to  
 01:50:34PM **10** yourself for a moment.  
 01:50:37PM **11 A.** Okay.  
 01:50:39PM **12 Q.** And going into the audit, then what was Arthur Andersen's  
 01:50:46PM **13** understanding about the internal accounting controls at BIA?  
 01:50:49PM **14 A.** They were very weak. I believe the purpose of the  
 01:50:56PM **15** financial statement audits were in line with discussions we had  
 01:51:01PM **16** had with the bureau about when you have a problem with  
 01:51:04PM **17** accounting records that's as long-standing as this had been, our  
 01:51:09PM **18** suggestion was to try to get a snapshot on a current state of  
 01:51:14PM **19** affairs and try to find out, you know, what the current  
 01:51:18PM **20** conditions of the control environment is, try to plug those  
 01:51:23PM **21** holes where weaknesses existed, focus on that first and then  
 01:51:26PM **22** back on the historical data afterwards, because the idea was to  
 01:51:30PM **23** try to bring the controls into a stronger environment in the  
 01:51:34PM **24** current period.  
 01:51:36PM **25 Q.** Now, were there instances where BIA's various accounting

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01:48:04PM **1 A.** Yes, they did.  
 01:48:05PM **2 Q.** I want us to look at the first of these reports on internal  
 01:48:11PM **3** controls, and we have marked it previously as Plaintiff's  
 01:48:16PM **4** Exhibit 31. It's the report on compliance and internal controls  
 01:48:20PM **5** for the year-ending September 30, 1988. This is the only time  
 01:48:43PM **6** I'm faster than a computer your Honor. If you kind of blow up  
 01:48:46PM **7** the heading there so Mr. Ziler can confirm that this is the  
 01:48:49PM **8** document that I just referred to.  
 01:48:51PM **9 A.** Correct.  
 01:48:52PM **10 Q.** Mr. Ziler, if at any point I show you documents there on  
 01:48:56PM **11** the screen that are not large enough, tell us and we'll blow up  
 01:49:00PM **12** those sections, okay?  
 01:49:01PM **13 A.** Okay.  
 01:49:01PM **14 Q.** Now, if we might turn to page -- the document as it will be  
 01:49:12PM **15** submitted to the Court on electronic form has page numbers one  
 01:49:17PM **16** through the end branded in the bottom left-hand corner, as  
 01:49:20PM **17** you'll see here on page one, your Honor, and we'll turn to page  
 01:49:25PM **18** four of the exhibit as presented to the Court, please. And if  
 01:49:36PM **19** you will blow that up at the top where it says "executive  
 01:49:39PM **20** summary" and the date, and this is an executive summary that you  
 01:49:49PM **21** and others at Arthur Andersen prepared and dated March 23rd,  
 01:49:54PM **22** 1989; is that correct?  
 01:49:55PM **23 A.** Correct.  
 01:49:57PM **24 Q.** I want to show you some highlighted language, if we can  
 01:49:59PM **25** bring that up here on page four of Exhibit 31. And we are now

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01:51:43PM **1** systems did not reconcile or agree with each other with respect  
 01:51:47PM **2** to the IIM trust?  
 01:51:50PM **3 A.** Correct.  
 01:51:50PM **4 Q.** And Mr. Ziler, today when I asked you about BIA's records,  
 01:51:54PM **5** I understand you audited both the tribal trust funds and the  
 01:51:59PM **6** individual Indian money trust, correct?  
 01:52:01PM **7 A.** Yes.  
 01:52:02PM **8 Q.** All my questions have to do with IIM, okay?  
 01:52:05PM **9 A.** Understood.  
 01:52:06PM **10 Q.** Now, let's look over at page five, the next page. And down  
 01:52:21PM **11** toward the bottom of the page you'll see the heading Analyzed  
 01:52:24PM **12** Amounts Recorded by the Bureau in the trust fund's financial  
 01:52:27PM **13** reporting systems, and if you will take a moment and read the  
 01:52:34PM **14** first approximately eight lines of that paragraph to yourself.  
 01:52:39PM **15 A.** Okay.  
 01:52:49PM **16 Q.** As used in this report where it talks about the bureau's  
 01:52:52PM **17** finance system, what is that?  
 01:52:53PM **18 A.** That's the equivalent of a general ledger and a corporation  
 01:52:58PM **19** that would be the summary level in which account balances were  
 01:53:04PM **20** kept, not to the individual beneficiary level, but just a  
 01:53:09PM **21** summary account, financial accounting system.  
 01:53:12PM **22 Q.** And do you see down a little bit, and I have it  
 01:53:16PM **23** highlighted, where it refers to then that the finance system is  
 01:53:21PM **24** not reconciled with some of the subsidiary systems, including  
 01:53:25PM **25** the Integrated Resource Management System, or IRMS?

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01:53:30PM **1** A. Correct.

01:53:30PM **2** Q. Do you recall how out of balance those were during the

01:53:33PM **3** audit years that you were involved with?

01:53:34PM **4** A. First it should be understood that the reason they're out

01:53:39PM **5** of balance is they're input from different sources, so it's not

01:53:43PM **6** an integrated system. That word, integrated, is a little bit

01:53:46PM **7** misleading because it was not integrated with the general ledger

01:53:50PM **8** system, so they had different sources of input and there were

01:53:54PM **9** differences. I think the first year at the end of 1988 the two

01:53:59PM **10** systems were out of balance between \$2 million and \$3 million,

01:54:02PM **11** closer to \$3 million, and then over time, I think in '89, that

01:54:10PM **12** number grew to something like \$11 million, and by 1990 I think

01:54:17PM **13** the systems were out of balance between \$19 and \$20 million, so

01:54:20PM **14** the difference kept growing.

01:54:22PM **15** Q. Okay. And when we're talking about they're out of balance,

01:54:27PM **16** we're talking about two separate systems, both of them BIA

01:54:32PM **17** systems?

01:54:32PM **18** A. Yes. In other words, if you added up all of the individual

01:54:35PM **19** Indian monies accounts within the accounting system and ran a

01:54:41PM **20** total of them, they would not agree to the general ledger

01:54:43PM **21** balance.

01:54:44PM **22** Q. Should those two totals agree?

01:54:46PM **23** A. Correct, yes.

01:54:47PM **24** Q. You just told us some amounts ranging from \$2 million to

01:54:51PM **25** \$19, million to \$20 million. Does that tell you what the true

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01:56:52PM **1** to the financial system.

01:56:54PM **2** Q. Okay. Now, I want to ask you about some of the specific

01:56:58PM **3** weaknesses or problems that are noted on this page, and let's

01:57:03PM **4** start with paragraph number two here on page six of Plaintiffs'

01:57:08PM **5** Exhibit 31. If you would look at that.

01:57:14PM **6** A. Yes. It's the one about the multiple accounting systems

01:57:18PM **7** that had various data entry points that were not in agreement

01:57:22PM **8** with each other, nor was there really an attempt for the most

01:57:27PM **9** part to reconcile the systems, and as a matter of fact, at one

01:57:32PM **10** point we asked the Bureau of Management I think the first year

01:57:37PM **11** whether they'd be able to go back and compute the original \$3

01:57:41PM **12** million issue and they declined to attempt at that time. They

01:57:44PM **13** said they didn't think it was possible.

01:57:45PM **14** Q. Well, this is the problem you alluded to earlier where you

01:57:49PM **15** have multiple systems with multiple points of entry; is that

01:57:53PM **16** correct?

01:57:53PM **17** A. Correct.

01:57:54PM **18** Q. Item three, it refers in item three to accounting entries

01:58:06PM **19** being posted on a decentralized basis without adequate review.

01:58:10PM **20** When you talk about decentralized basis, what did you mean?

01:58:13PM **21** A. An entry being made at an area office or at an agency

01:58:21PM **22** office that was not subjected to any form of supervisory review,

01:58:31PM **23** either in the field or the centralized location.

01:58:34PM **24** Q. And that is a problem?

01:58:35PM **25** A. Well, yes. When information gets into a system there

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01:54:54PM **1** scope of the issue is?

01:54:55PM **2** A. No, because you don't know whether either one of them is

01:54:59PM **3** correct. We were unable to establish that either balance was

01:55:07PM **4** correct.

01:55:07PM **5** Q. Okay. Let's look, then, over at the next page at the top.

01:55:23PM **6** I don't have it highlighted here, but could you pull that up,

01:55:25PM **7** the first full paragraph, and highlight or blow it up for us?

01:55:31PM **8** And Mr. Ziler, it says here that these errors and the

01:55:38PM **9** related adjustments result from a wide variety of procedural

01:55:41PM **10** weaknesses, some of which are material weaknesses in accounting

01:55:43PM **11** systems and internal control procedures utilized by the bureau,

01:55:47PM **12** and other problems such as inadequate training and supervision

01:55:51PM **13** of personnel and personnel shortages. It goes on in the next

01:55:55PM **14** sentence and says, Certain of these weaknesses are so pervasive

01:56:00PM **15** and fundamental as to render the accounting systems unreliable.

01:56:05PM **16** What do you mean by "unreliable"?

01:56:07PM **17** A. We concluded that the systems could not be relied upon to

01:56:12PM **18** capture the transactions they were supposed to capture or the

01:56:16PM **19** balances they were supposed to capture, and we knew of accounts

01:56:23PM **20** that were incorrect just by the fact that the trust liability

01:56:29PM **21** was a debit balance versus a credit balance, and the related

01:56:32PM **22** assets in some cases were credit balances rather than debit

01:56:36PM **23** balances, which is impossible. We knew that there were missing

01:56:40PM **24** accounts. Just the fact that they did not balance with one

01:56:46PM **25** another, a variety of issues that just did not lend credibility

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01:58:43PM **1** should be a review process. The document theory support should

01:58:48PM **2** be reviewed just to make sure that there's evidence that it's an

01:58:52PM **3** appropriate entry, and some of the entries being made did not

01:58:58PM **4** necessarily make sense, nor could we tell why they had been made

01:59:06PM **5** or whether anyone had ever reviewed their accuracy.

01:59:09PM **6** Q. This comes up in a couple of these items. In some places

01:59:15PM **7** in the report it talks about a lack of standardization --

01:59:18PM **8** A. Yes.

01:59:18PM **9** Q. -- between the various offices. Can you describe what you

01:59:22PM **10** found when Arthur Andersen began this audit in terms of any

01:59:26PM **11** standardization between the various agencies and area offices?

01:59:31PM **12** A. We didn't go to every single office. I think maybe around

01:59:35PM **13** somewhere around maybe a hundred plus, I believe we went to

01:59:38PM **14** maybe 25 agency offices and maybe half the area offices.

01:59:45PM **15** Q. And there were twelve area offices?

01:59:49PM **16** A. Yes. And in that process we were looking for, you know, to

01:59:53PM **17** try to develop a standard audit program. We said, well, this

01:59:57PM **18** should be a program that we could use to audit every agency or

02:00:01PM **19** area office, and we went there. What we thought we understood

02:00:05PM **20** going in and what we could test, we either found we couldn't

02:00:09PM **21** test it because the procedure didn't exist or the documentation

02:00:12PM **22** didn't exist, or that's not what they were doing at that

02:00:15PM **23** particular office, so the audit process broke down to a large

02:00:19PM **24** extent because there was anything used as a preconceived notion

02:00:25PM **25** about what to expect it did not exist.

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02:00:28PM **1** **Q.** When you look at automated information in the accounting  
02:00:34PM **2** system from one office and compare it to the other offices, did  
02:00:38PM **3** this lack of standardization mean that it was difficult to  
02:00:43PM **4** compare between offices at times?  
02:00:45PM **5** **A.** Yes.  
02:00:45PM **6** **Q.** Let me ask you to look at item number five.  
02:00:47PM **7** MR. KIRSCHMAN: Your Honor, at this point I'm going to  
02:00:49PM **8** raise an objection. We've listened to this line of inquiry for  
02:00:52PM **9** a while and it is not relevant to the scope of this trial as you  
02:00:56PM **10** set it out related to the dollar signs, and so objection;  
02:01:03PM **11** relevance.  
02:01:03PM **12** THE COURT: I'm going to hear it. Thank you.  
02:01:09PM **13** Objection overruled.  
02:01:09PM **14** BY MR. DORRIS:  
02:01:09PM **15** **Q.** Looking at item five, if you will read that to yourself, it  
02:01:14PM **16** addresses inadequate segregation of duties?  
02:01:18PM **17** **A.** Yes.  
02:01:18PM **18** **Q.** And it says, for example, in many locations the same  
02:01:23PM **19** employees transfer assets among accounts and open new accounts  
02:01:26PM **20** resulting in the opportunity for intentional or unintentional  
02:01:31PM **21** misuse of resources. What's the problem that you're talking  
02:01:34PM **22** about there?  
02:01:34PM **23** **A.** Well, that kind of ties back to the journal entries that  
02:01:38PM **24** are unreviewed that we just discussed previously, and what  
02:01:43PM **25** happens is if a beneficiary, a beneficiary's account -- well,

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02:03:21PM **1** **Q.** Tell us what's been addressed here to the extent you've not  
02:03:26PM **2** already described this.  
02:03:29PM **3** **A.** Certain accounting systems were centrally managed, like the  
02:03:33PM **4** finance system. There were other subsystems that existed in the  
02:03:38PM **5** field locations that were modified on sort of an ad hoc basis,  
02:03:45PM **6** and so you could take different locations operating in the same  
02:03:49PM **7** system and modifications had been made to the system so they  
02:03:52PM **8** weren't standard from one place to the other so they were not  
02:03:55PM **9** using the same programs and they had the ability to change them  
02:03:59PM **10** on site.  
02:04:00PM **11** **Q.** Now, looking then at the next one talking about record  
02:04:05PM **12** retention and filing procedures, how is that related to a lack  
02:04:11PM **13** of internal accounting controls?  
02:04:13PM **14** **A.** When there are poor accounting records the accountability  
02:04:23PM **15** requirement basically disappears because there is no way to  
02:04:26PM **16** determine whether a transaction was properly documented or  
02:04:28PM **17** whether it was appropriate in the first place, and when we  
02:04:33PM **18** attempted to review records at the field locations often times  
02:04:39PM **19** either it was evident that transactions were not originally  
02:04:42PM **20** documented or that for some reason the documentation had  
02:04:46PM **21** disappeared.  
02:04:47PM **22** **Q.** Okay. Now, let me ask you, we've been talking about issues  
02:04:52PM **23** just with inside BIA's own systems and in terms of lack of  
02:04:58PM **24** internal controls. Do those same problems that you talk about  
02:05:03PM **25** here in terms of lack of internal controls, how does that relate

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02:01:55PM **1** let me just say this. A beneficiary's account could be changed  
02:01:58PM **2** in the field at a location without review, so if you were trying  
02:02:02PM **3** to get a beneficiary some money, you just made a journal entry  
02:02:05PM **4** to transfer a credit balance to their trust fund account and  
02:02:09PM **5** then you would write them a check, whether they really were  
02:02:12PM **6** entitled to it or not, and that lack of segregation of controls  
02:02:15PM **7** is very fundamental in like any business environment you try to  
02:02:19PM **8** keep the accounting versus the handling of the actual cash  
02:02:23PM **9** assets separate from each other, and those were activities that  
02:02:27PM **10** were being done by the same person, so they had virtually a  
02:02:30PM **11** hundred percent control over what they wanted to do.  
02:02:33PM **12** **Q.** The same person receiving the money that was also then  
02:02:36PM **13** entering it into the accounting system and then would also be  
02:02:39PM **14** involved in transfer between accounts?  
02:02:41PM **15** **A.** And disbursement.  
02:02:42PM **16** **Q.** Okay. And is that a problem that continued throughout the  
02:02:47PM **17** time of these audits?  
02:02:48PM **18** **A.** I think the bureau tried to work on it, but as I recall,  
02:02:52PM **19** throughout the entire period, I mean, the problem was so, you  
02:02:56PM **20** know, at so many locations I don't think they got their arms  
02:03:01PM **21** around it by the time we finished our audit.  
02:03:03PM **22** **Q.** Look at item seven dealing with data processing controls,  
02:03:08PM **23** and if you would read that to yourself and then let me know I  
02:03:11PM **24** want to ask you some questions about it.  
02:03:13PM **25** **A.** Yes.

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02:05:08PM **1** to trying to ensure that a system is not subject to  
02:05:13PM **2** misappropriation or misuse or fraud?  
02:05:16PM **3** **A.** I'm not sure I'm following the question.  
02:05:21PM **4** **Q.** Okay. In other words, what is the purpose of having strong  
02:05:24PM **5** internal controls over the accounting system?  
02:05:26PM **6** **A.** Well, the internal controlled environment should be  
02:05:32PM **7** designed. It's typically designed to ensure that upper  
02:05:38PM **8** management can set parameters about how transactions should  
02:05:42PM **9** occur, and those controls provide a check and balance system to  
02:05:45PM **10** ensure that transactions are consistently conducted and recorded  
02:05:52PM **11** and captured in the accounting system and that one employee is  
02:05:57PM **12** somewhat a cross-check on another person so that they can't walk  
02:06:01PM **13** away with the store. When the controls environment does not  
02:06:05PM **14** exist, you have no ability to make sure that any of management's  
02:06:12PM **15** assertions about how they want business conducted are actually  
02:06:16PM **16** being conducted that way.  
02:06:17PM **17** **Q.** Now, let me ask you some questions about then how BIA's  
02:06:22PM **18** systems reconciled with treasury, and let's look at the top of  
02:06:27PM **19** the next page. And if you'll pull up that heading in the first  
02:06:37PM **20** paragraph, please, and this is on page seven of Plaintiffs'  
02:06:44PM **21** Exhibit 31, and it talks about confirmed and performed other  
02:06:49PM **22** verification procedures for all monetary assets, cash and  
02:06:53PM **23** investments held for trust funds managed by the bureau. Do you  
02:06:55PM **24** see that?  
02:06:55PM **25** **A.** Yes.

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02:06:55PM **1** Q. And the first type of asset that's referred to there is  
02:07:00PM **2** cash, and would you take a moment and read that paragraph to  
02:07:04PM **3** yourself?  
02:07:05PM **4** A. Okay.  
02:07:30PM **5** Q. Mr. Ziler, this is talking about treasury functioning as a  
02:07:37PM **6** bank and disbursing agent for the bureau. Describe that for us.  
02:07:40PM **7** A. Okay. U.S. treasury was the bureau's checking account. It  
02:07:52PM **8** was where the bureau received deposits and the account from  
02:07:55PM **9** which it made disbursements, so all cash activity took place  
02:08:00PM **10** through treasury. The problem we had, as pointed out here, was  
02:08:07PM **11** that initially going in we thought that the treasury was going  
02:08:10PM **12** to be able to confirm the bank account like you would when you  
02:08:14PM **13** get a monthly statement from your bank on your own personal  
02:08:17PM **14** account. You'd have a balance and you can reconcile your cash  
02:08:21PM **15** account to it, but early into our work we came to the  
02:08:27PM **16** realization that treasury said they would not be able to provide  
02:08:29PM **17** a confirmation of the account, nor did they maintain that  
02:08:33PM **18** information, nor had they previously maintained that  
02:08:38PM **19** information, so that is a severe constraint on the bureau's  
02:08:45PM **20** ability to determine that its cash balance was correct at any  
02:08:48PM **21** point in time.  
02:08:49PM **22** And what's more, when we talked to people at treasury  
02:08:53PM **23** we were informed that all they knew of was the information that  
02:08:56PM **24** went in and out of the account, all the bureau's accounts,  
02:09:00PM **25** whether they were trust accounts or operating accounts or

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02:10:41PM **1** I think there was a quantification of the lost interest up in  
02:10:46PM **2** the millions of dollars, and there was no -- so the treasury did  
02:10:52PM **3** not know they had a deposit because they weren't told they had a  
02:10:56PM **4** deposit.  
02:10:57PM **5** Q. Okay. Because of this is it possible for money to be  
02:11:00PM **6** deposited into treasury from the IIM trust but to never be  
02:11:06PM **7** accounted for by BIA?  
02:11:08PM **8** MR. KIRSCHMAN: Objection; calls for speculation.  
02:11:11PM **9** He's a fact witness. We established that.  
02:11:21PM **10** THE COURT: I'll sustain that. Can you give me a  
02:11:23PM **11** better foundation for that? Is it possible for money to be  
02:11:27PM **12** deposited?  
02:11:28PM **13** MR. DORRIS: Okay.  
02:11:28PM **14** BY MR. DORRIS:  
02:11:30PM **15** Q. As part of Arthur Andersen's internal control process are  
02:11:35PM **16** checks of BIA's internal accounting controls. You've indicated  
02:11:40PM **17** that you communicated with treasury and grew to have an  
02:11:45PM **18** understanding of how treasury and BIA worked together with  
02:11:49PM **19** respect to what you've referred to here as essentially the  
02:11:56PM **20** banking relationship?  
02:11:57PM **21** A. Well, within my, you know, I don't have a good view behind  
02:12:01PM **22** the curtain of what goes on at treasury, but from my  
02:12:05PM **23** understanding the only record of deposits into the bureau  
02:12:12PM **24** account at treasury was from the bureau, and those -- the  
02:12:19PM **25** treasury depended on the bureau to correctly code and enter that

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02:09:05PM **1** whatever they were. Based on the coding that the bureau  
02:09:09PM **2** provided, and they did not independently check that information,  
02:09:14PM **3** so the treasury's information source even to confirm activity  
02:09:19PM **4** back to us was based on information that was provided by the  
02:09:24PM **5** bureau itself. The bureau could only reconcile with itself, not  
02:09:28PM **6** with any banker.  
02:09:29PM **7** Q. And could the bureau actually even reconcile within its own  
02:09:33PM **8** accounting systems?  
02:09:34PM **9** A. It's not much of a reconciliation because you have no  
02:09:37PM **10** independent source to verify with.  
02:09:42PM **11** Q. Now, looking at the fourth line down over to the right, the  
02:09:47PM **12** sentence begins: In addition to treasury's inability to provide  
02:09:49PM **13** an independent verification of the cash balances held, there are  
02:09:54PM **14** known instances where, one, the bureau has not provided proper  
02:10:00PM **15** notification to treasury of amounts deposited, and then it goes  
02:10:04PM **16** on, and I'll come back there. But this first one tells us what  
02:10:07PM **17** you know about what's being referred to there as known instances  
02:10:10PM **18** where the bureau didn't provide notification to treasury of  
02:10:14PM **19** deposits that had been made in treasury?  
02:10:17PM **20** A. Okay. One of the things we became aware of during the '88  
02:10:21PM **21** audit, and then I think it was brought to our attention by the  
02:10:24PM **22** bureau, was that they had not told treasury about deposits that  
02:10:28PM **23** had been made, I think it was in for half a year in 1986. And  
02:10:34PM **24** so treasury had no record of those deposits, and they were  
02:10:38PM **25** supposed to be earning interest during that period of time, and

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02:12:26PM **1** information to get it into the right accounts. If it was mis-  
02:12:30PM **2** coded it could have gone into an account other than a trust  
02:12:34PM **3** account and, you know, that we know for one period of time I  
02:12:38PM **4** believe because the bureau found it itself. There was a  
02:12:42PM **5** substantial amount of money that was deposited with treasury and  
02:12:46PM **6** the treasury did not know about it until the bureau said, oops,  
02:12:53PM **7** we found it, so they happened to catch it in that instance. I  
02:12:56PM **8** would believe there's the potential certainly for it to happen  
02:12:59PM **9** again. I can't say that it didn't.  
02:13:02PM **10** Q. As part of --  
02:13:03PM **11** MR. KIRSCHMAN: Objection. We request that that  
02:13:05PM **12** answer be stricken. The question elicited nothing but hearsay  
02:13:09PM **13** from the witness.  
02:13:10PM **14** THE COURT: Overruled.  
02:13:11PM **15** BY MR. DORRIS:  
02:13:13PM **16** Q. Mr. Ziler, as part of the Arthur Andersen audit, was Arthur  
02:13:19PM **17** Andersen able to get independent verification from treasury that  
02:13:24PM **18** would indicate what the full amount of the IIM trust funds had  
02:13:29PM **19** been deposited into treasury?  
02:13:32PM **20** A. No.  
02:13:33PM **21** Q. And then looking at the last sentence in this paragraph, it  
02:13:49PM **22** says because the treasury's inability to independently confirm  
02:13:53PM **23** balances and the bureau's history of known instances of  
02:13:56PM **24** accounting errors that resulted in overinvestment and  
02:14:00PM **25** underinvestment available cash balances, it was not possible to

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02:14:03PM **1** verify cash balances. And is that what you described earlier,  
 02:14:08PM **2** that you weren't able to verify certain assets, including the  
 02:14:11PM **3** cash balances?  
 02:14:12PM **4** **A.** Correct. That's what we've been talking about, yep.  
 02:14:15PM **5** **Q.** Now, if we'll look down the page at the next heading, and  
 02:14:27PM **6** two paragraphs under that. We probably can get them together.  
 02:14:30PM **7** These address a confirmation process that you're talking about.  
 02:14:36PM **8** With respect to the IIM audit, would describe briefly what the  
 02:14:43PM **9** results of the confirmation -- first of all, what the  
 02:14:46PM **10** confirmation process is.  
 02:14:48PM **11** **A.** Okay. Well, an audit, where possible, constitutes  
 02:14:54PM **12** confirming balances with third parties so that you have some  
 02:14:58PM **13** evidence that there's a meeting of the mind between the parties,  
 02:15:01PM **14** either treasury or the account beneficiaries, so in connection  
 02:15:06PM **15** with the IIM audit, there being somewhere around 300,000  
 02:15:11PM **16** accounts, we didn't attempt to send what we call a positive  
 02:15:15PM **17** confirmation account holder, a positive account --  
 02:15:21PM **18** **Q.** A positive confirmation?  
 02:15:23PM **19** **A.** Confirmation request consists of sending a balance or the  
 02:15:28PM **20** statement to the party with a letter requesting to confirm their  
 02:15:33PM **21** agreement back to us, and in that -- we call it a positive  
 02:15:37PM **22** confirmation because we're asking them to confirm the request,  
 02:15:41PM **23** whether they agree or disagree, and what we did, because there  
 02:15:46PM **24** were so many accounts, we picked only the accounts that were  
 02:15:49PM **25** over \$50,000 each, and there were, I don't know, some -- I'm

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02:17:48PM **1** **Q.** Was this a concern to you and Arthur Andersen?  
 02:17:51PM **2** **A.** Yeah. It's very rare to have this kind of a confirmation  
 02:17:55PM **3** result. I audited a number of banks and on those banks we  
 02:17:58PM **4** rarely get back an exception on a confirmation other than  
 02:18:03PM **5** something that's a timing difference. A long draft was taken  
 02:18:08PM **6** out at a point in time that created a reconciling difference,  
 02:18:12PM **7** and in those cases we generally try to verify that they were  
 02:18:16PM **8** just timing differences and thereby validate the confirmation  
 02:18:21PM **9** process. In these cases, just so many statements that they just  
 02:18:25PM **10** didn't agree, or they could see the statement but the checks  
 02:18:30PM **11** that were shown that they were supposed to be receiving, they  
 02:18:34PM **12** never received them, so we had a lot of exceptions that were  
 02:18:40PM **13** very concerning and ultimately concluded that we could not give  
 02:18:46PM **14** any comfort that the individual IIM account balances were  
 02:18:48PM **15** accurate.  
 02:18:50PM **16** **Q.** As part of this report and the other reports that were done  
 02:18:55PM **17** in 19 -- for the year ending September 30, 1989 and 1990, did  
 02:19:02PM **18** Arthur Andersen report on BIA's compliance with applicable  
 02:19:07PM **19** regulations and codes?  
 02:19:08PM **20** **A.** Yes.  
 02:19:08PM **21** **Q.** And in this document there are seventeen such noncompliance  
 02:19:13PM **22** items. I want to ask you to look at four of them very briefly,  
 02:19:17PM **23** three dealing with disbursements and one dealing with receipts.  
 02:19:21PM **24** The first disbursement issue, let's look at page 22, which is  
 02:19:34PM **25** page 8 of the report on noncompliance, and do you see up at the

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02:15:55PM **1** trying to remember the number, but it was somewhere around five  
 02:15:58PM **2** hundred accounts that had balances of that size, so we sent  
 02:16:01PM **3** those confirmations out, and then to everyone else that received  
 02:16:06PM **4** a statement, I believe at the time statements were being sent  
 02:16:09PM **5** out theoretically every six months. We had the I.T. group that  
 02:16:15PM **6** was printing out the statements print a confirmation request on  
 02:16:19PM **7** the statement itself saying that if the beneficiary did not  
 02:16:26PM **8** agree with the balance to please contact Arthur Andersen, so we  
 02:16:32PM **9** sent both of those type of requests.  
 02:16:34PM **10** **Q.** Okay. At the second paragraph under this heading indicates  
 02:16:36PM **11** a significant portion of the confirmation requests were not  
 02:16:40PM **12** returned to us, and in addition, the confirmation requests which  
 02:16:44PM **13** were returned to us indicated both disagreements in certain  
 02:16:48PM **14** instances and simply apply an inability to confirm cumulative  
 02:16:52PM **15** balances and/or activity in many instances. Describe for us, if  
 02:17:00PM **16** you can, summarize for us, what was your view as an experienced  
 02:17:06PM **17** C.P.A. when these confirmation requests started coming in?  
 02:17:10PM **18** **A.** I guess I'd use the term "alarming." Out of, say, five  
 02:17:16PM **19** hundred positive confirmations, we received responses that  
 02:17:22PM **20** indicated agreement of only about seventy accounts, I think it  
 02:17:27PM **21** was, and in '88, in 1988, so that was like one out of every six  
 02:17:33PM **22** or seven beneficiaries agreed with their account balance. The  
 02:17:37PM **23** rest of them either didn't respond or in many cases provided  
 02:17:43PM **24** confirmations that said that they really didn't agree with what  
 02:17:46PM **25** was on the statement.

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02:19:40PM **1** top where it talks about lack of documentation for IIM  
 02:19:45PM **2** disbursements?  
 02:19:45PM **3** **A.** Yes.  
 02:19:46PM **4** **Q.** If you'll take a look at that first paragraph.  
 02:19:49PM **5** **A.** Okay.  
 02:19:54PM **6** **Q.** And what was the problem here?  
 02:19:56PM **7** **A.** Well, there's certain documentation, as I mentioned  
 02:20:00PM **8** earlier, that's required for disbursement, just to demonstrate  
 02:20:06PM **9** that it was for the legitimate purpose it was supposed to be  
 02:20:09PM **10** for, and we in many instances or a certain number of instances,  
 02:20:14PM **11** we're citing here, I don't know how many that was, we're saying  
 02:20:17PM **12** that no such documentation existed.  
 02:20:19PM **13** **Q.** Okay. Let's look now toward the bottom of the page, and  
 02:20:26PM **14** that's dealing with IIM disbursements from minors' accounts made  
 02:20:31PM **15** to unauthorized persons, and if you'll look at that.  
 02:20:37PM **16** **A.** Okay.  
 02:20:37PM **17** **Q.** This is a similar situation where disbursements were being  
 02:20:41PM **18** made without the proper authorization forms being signed?  
 02:20:47PM **19** **A.** Yes. It's a little different situation. Here you have  
 02:20:51PM **20** children and someone who are beneficiaries, that someone in  
 02:20:55PM **21** their custody is supposed to be looking out for their best  
 02:21:00PM **22** interest in making sure that they authorize the payments for the  
 02:21:04PM **23** minor's benefit, and in a number of cases we saw disbursements  
 02:21:10PM **24** coming out of these accounts that didn't have any identifiable  
 02:21:14PM **25** relationship with the individual or their guardian.

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02:21:17PM **1** **Q.** Okay. And so this is then where a disbursement was going  
 02:21:22PM **2** to someone that wasn't even on the account?  
 02:21:24PM **3** **A.** There could have been a legitimate purpose, but we weren't  
 02:21:28PM **4** able to establish it.  
 02:21:29PM **5** **Q.** Okay. The last disbursement issue I want to ask you about  
 02:21:33PM **6** in terms of noncompliance is over on page 26, the bottom half of  
 02:21:37PM **7** that page. As it comes up you'll see that it has to do with  
 02:21:42PM **8** inadequate safeguarding of treasury checks. Would you read that  
 02:21:46PM **9** paragraph to yourself?  
 02:21:48PM **10** **A.** Okay.  
 02:21:59PM **11** **Q.** This was talking about treasury checks at BIA. Can you  
 02:22:04PM **12** explain how that happens?  
 02:22:06PM **13** **A.** Well, I believe every area office and agency had some  
 02:22:13PM **14** ability to write checks on site using treasury check stock, and  
 02:22:19PM **15** they kept stacks of them sitting around. In some cases they  
 02:22:23PM **16** were unprotected, and we apparently noticed instances when we  
 02:22:30PM **17** went to one agency office here that's cited where they opened  
 02:22:36PM **18** the vault, left it open. All the employees had the combination,  
 02:22:41PM **19** but they left the safe open all day long unguarded and  
 02:22:45PM **20** unprotected so that check stock, you can just pick up a stack of  
 02:22:49PM **21** it and take it.  
 02:22:51PM **22** **Q.** Okay. And were there other safeguards in place regarding  
 02:22:57PM **23** the treasury checks?  
 02:22:59PM **24** **A.** I think part of the problem is if you think about your own  
 02:23:03PM **25** personal checking account you can say, well, last one I wrote

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02:24:53PM **1** more likely than not from what we saw the money was taken and  
 02:24:57PM **2** charged to somebody's account or a special deposit account where  
 02:25:00PM **3** it was really difficult, there was no one person that could say,  
 02:25:04PM **4** hey, where did the money go, because it was sort of a commingled  
 02:25:09PM **5** account, so we saw more of that than we did that we had any  
 02:25:14PM **6** awareness of checks being taken and not being accounted for in  
 02:25:18PM **7** the system.  
 02:25:19PM **8** **Q.** How many did you see? Was it ever processed?  
 02:25:22PM **9** **A.** Some was.  
 02:25:23PM **10** **Q.** In what sorts of amounts?  
 02:25:24PM **11** **A.** I believe we are going to get --  
 02:25:26PM **12** **Q.** Go ahead.  
 02:25:27PM **13** **A.** -- into a discussion about that, but we had hearsay of a  
 02:25:32PM **14** number of instances of fraud, but the only one that I had, have  
 02:25:37PM **15** any documentation on, was in the first quarter in '91. The  
 02:25:42PM **16** Crown Point area office had a complaint from an account holder  
 02:25:49PM **17** and we got engaged to go out and take a look to see what was  
 02:25:54PM **18** going on, and then that particular instance a lady -- there were  
 02:26:01PM **19** about 13,000 accounts at the Crown Point agency, so that's a lot  
 02:26:07PM **20** of IIM accounts. It's like four percent of the total, and there  
 02:26:11PM **21** was apparently a lady there that had a lot of money flowing  
 02:26:15PM **22** through her account, but she lived in California. She came out  
 02:26:18PM **23** to the reservation periodically to pick up her money, and a  
 02:26:22PM **24** worker there thought that -- as a matter of fact, when she saw  
 02:26:26PM **25** the volume of money going through this lady's account the lady

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02:23:07PM **1** was 5641, so darn, I forgot to enter it, so you'll go back and  
 02:23:13PM **2** you'll look to see where it was and you try to keep track of  
 02:23:16PM **3** them in sequence, and with a hundred different locations issuing  
 02:23:20PM **4** checks, keeping track of the check stock and the used checks in  
 02:23:27PM **5** sequence was a virtual impossibility.  
 02:23:29PM **6** **Q.** Okay. Now, let me ask you, I want to look at an instance  
 02:23:34PM **7** of noncompliance that deals with --  
 02:23:36PM **8** THE COURT: Before you leave this check question, what  
 02:23:41PM **9** does the check thing have to do with the cash in this case? I  
 02:23:44PM **10** mean, if somebody took a check out of an unprotected safe, an  
 02:23:50PM **11** original office, and wrote a check to himself, would the money  
 02:23:54PM **12** come out of an IIM account or would it come out of the treasury  
 02:23:58PM **13** general account?  
 02:23:59PM **14** THE WITNESS: It would come out of both because the  
 02:24:01PM **15** check was on the treasury account but typically they were --  
 02:24:06PM **16** there was -- there were carbon copies to the check, and those  
 02:24:11PM **17** got submitted to the central office, so in the instances where  
 02:24:16PM **18** we'd seen the person didn't just walk off with the check and  
 02:24:20PM **19** there was no accounting for it. What we typically saw, we have  
 02:24:23PM **20** some instances of this where the individual that stole the money  
 02:24:30PM **21** dummied up the carbon copies, sent them in to the bureau,  
 02:24:35PM **22** because they weren't really probably that aware of how closely  
 02:24:41PM **23** they were being watched. I'm not sure they were being watched  
 02:24:43PM **24** that closely, but I guess you're right, money could be taken and  
 02:24:46PM **25** not accounted for at all, and that came out of treasury, but

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02:26:30PM **1** even commented to her that, geez, I'm getting killed on income  
 02:26:33PM **2** taxes for all this income I'm getting, and she says, I need a  
 02:26:37PM **3** charity, so this lady decided in her deposition as her -- it's  
 02:26:43PM **4** deposition, or what would you call that?  
 02:26:44PM **5** **Q.** You're correct.  
 02:26:46PM **6** **A.** Her interview. With the IG she said that she just thought  
 02:26:51PM **7** she'd take it upon herself to be that charity, and in her  
 02:26:56PM **8** account and her boyfriend's account, who was also an area IIM  
 02:27:01PM **9** area manager, he was her live-in, she got pregnant, decided she  
 02:27:06PM **10** needed some money, they had a joint account and we saw something  
 02:27:10PM **11** like 130, \$155,000 being deposited into her account using two  
 02:27:20PM **12** schemes, and her boyfriend, although they had a joint account,  
 02:27:24PM **13** said he knew nothing about it. She justified it because she  
 02:27:28PM **14** needed the money. Her parents needed money. She took a lot of  
 02:27:32PM **15** money from that one account, so we had that one person that  
 02:27:36PM **16** actually confessed to part of that \$155,000. During that same  
 02:27:41PM **17** investigation we spent about seven hundred hours out there I  
 02:27:43PM **18** think. We just picked on accounts that had a thousand dollars  
 02:27:50PM **19** or more going out of them at a time and certain accounts that  
 02:27:54PM **20** had maybe only five hundred going out, but in the course of a  
 02:27:58PM **21** month maybe \$5,000 was taken out, so there would be like ten  
 02:28:02PM **22** transactions totaling five thousand a month, so we looked at  
 02:28:06PM **23** those, looked at patterns, found patterns. We knew that there  
 02:28:11PM **24** were -- there was money being taken out to certain parties, but  
 02:28:16PM **25** we could not get, at the time we performed the work we didn't

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02:28:21PM **1** have subpoenas or the IG didn't have subpoenas for their bank  
 02:28:25PM **2** account records so we couldn't look at the other side of it, but  
 02:28:29PM **3** it was, I mean, there were hundreds of thousands of dollars that  
 02:28:31PM **4** were problems at that one location.  
 02:28:34PM **5 Q.** Thank you. In the one instance that you talked about, this  
 02:28:38PM **6** one employee, and I think you said about one hundred fifty-five  
 02:28:41PM **7** thousand, that she had a couple of different schemes, but did  
 02:28:46PM **8** all of them involve access to treasury checks and writing  
 02:28:49PM **9** treasury checks?  
 02:28:50PM **10 A.** Yes. And, you know, then when we received the information,  
 02:28:55PM **11** the documentation justifying those disbursements, they had  
 02:29:00PM **12** disappeared, none of them had existed, and the only track we  
 02:29:09PM **13** could get on them was to get cancelled checks from treasury and  
 02:29:14PM **14** find out whose accounts that they were going to, so it was a  
 02:29:17PM **15** very long process. It took a long time to do it, but the two  
 02:29:22PM **16** mechanisms were just to write the check out to herself but turn  
 02:29:25PM **17** in the carbon papers as though they were written out to the  
 02:29:31PM **18** correct beneficiary. That was done. And then in another case  
 02:29:35PM **19** they were made out to a vendor name that ultimately got  
 02:29:39PM **20** deposited into her account, so two schemes.  
 02:29:42PM **21 Q.** Let me ask you now to look at the bottom of page 25 of  
 02:29:47PM **22** Plaintiffs' Exhibit 31. And this is the one item, a  
 02:29:53PM **23** noncompliance dealing with receipts that I wanted to ask you  
 02:29:55PM **24** about. It's titled Proper Recording and Safeguarding of Cash  
 02:30:05PM **25** Receipts, and then you see it cites to a particular section. It

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02:32:03PM **1 A.** Yes.  
 02:32:03PM **2 Q.** Now, with respect to the items of internal control  
 02:32:08PM **3** weaknesses, this report identifies 59 specific findings. I want  
 02:32:13PM **4** to ask you briefly about three.  
 02:32:15PM **5 A.** Okay.  
 02:32:15PM **6 Q.** If we'll turn to page 47 of Plaintiffs' Exhibit 31. This  
 02:32:22PM **7** is where it talks about inability to reconcile cash, including  
 02:32:25PM **8** balances of vested overnight in the U.S. Treasury.  
 02:32:39PM **9** MR. DORRIS: Your Honor, the computer went down and  
 02:32:42PM **10** he's rebooting so it may take just a moment.  
 02:32:42PM **11** BY MR. DORRIS:  
 02:32:45PM **12 Q.** But I'll tell you what, maybe we can do it without looking  
 02:32:49PM **13** at it.  
 02:32:49PM **14 A.** Okay.  
 02:32:49PM **15 Q.** You've already described this issue?  
 02:32:51PM **16 A.** Yes.  
 02:32:52PM **17 Q.** And on page 47 where it talks about this inability of  
 02:32:56PM **18** treasury and BIA to reconcile, it says this condition represents  
 02:33:01PM **19** a material weakness in an internal control. You say this about  
 02:33:06PM **20** a couple of them, but was this in Arthur Andersen's material  
 02:33:13PM **21** weakness in connection with internal accounting controls?  
 02:33:16PM **22 A.** Probably the largest concern before anything.  
 02:33:19PM **23 Q.** Now, the next internal control weakness that I want to ask  
 02:33:27PM **24** you about has to do with the IIM accounts, and it begins on page  
 02:33:31PM **25** 61 when our system comes back up, and it's talking about IIM

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02:30:11PM **1** talks about only authorized employees designated in writing by  
 02:30:13PM **2** proper authority will receive, handle, or deposit monies.  
 02:30:17PM **3 A.** Correct.  
 02:30:17PM **4 Q.** And then if you'll go to the top of the next page, please,  
 02:30:20PM **5** that first full paragraph. And it goes on to the quote from the  
 02:30:29PM **6** manual, but it says employees in the realty division. If you'll  
 02:30:33PM **7** read that to yourself I want to ask some questions to you.  
 02:30:44PM **8 A.** Okay.  
 02:30:44PM **9 Q.** What's happening here and what's the problem with it?  
 02:30:47PM **10 A.** Persons with no authority to receive money were receiving  
 02:30:55PM **11** money, and then we saw steal deposit sitting around that had not  
 02:31:01PM **12** been deposited for a long period of time, so two issues. One of  
 02:31:06PM **13** them is because the segregation of duties. You would apparently  
 02:31:13PM **14** -- the design of the system was to ensure that employees that  
 02:31:19PM **15** shouldn't be making deposits if they had access to certain other  
 02:31:22PM **16** information for segregation of duty purposes, if you had those  
 02:31:26PM **17** people actually receiving money and then they weren't doing the  
 02:31:29PM **18** job. They weren't depositing, at least for some period of time.  
 02:31:33PM **19** Maybe they got ultimately deposited but they sat around for at  
 02:31:39PM **20** least a long period of time.  
 02:31:41PM **21 Q.** Okay. It also indicates here that, in addition, it was  
 02:31:49PM **22** noted that in certain instances cash receipts were kept in an  
 02:31:54PM **23** opened and unlocked safe. These practices are in violation of  
 02:31:59PM **24** the regulations referenced above. Is that an instance that was  
 02:32:01PM **25** observed by Arthur Andersen?

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02:33:40PM **1** reconciliations. And it talks about being IRMS and the finance  
 02:33:46PM **2** system being out of balance, and it states specific, we  
 02:33:51PM **3** recommend that IRMS be reconciled to the finance system with  
 02:33:55PM **4** emphasis placed on area and agency offices with large  
 02:33:59PM **5** discrepancies between the two systems. That was Arthur -- was  
 02:34:04PM **6** that Arthur Andersen's recommendation on that point?  
 02:34:06PM **7 A.** It sounds like it from what you're saying. I don't have it  
 02:34:10PM **8** in front of me, but it sounds like something we would have said,  
 02:34:13PM **9** yes.  
 02:34:13PM **10 Q.** All right. It goes on and states: We also understand that  
 02:34:16PM **11** management does not believe it will be possible to reconcile all  
 02:34:20PM **12** the differences which have accumulated over a period of several  
 02:34:23PM **13** years. The reference there to management, who is that referring  
 02:34:29PM **14** to?  
 02:34:29PM **15 A.** Oh, I don't remember specifically who we would have  
 02:34:35PM **16** discussed this with, but I'm sure we, as part of the audit  
 02:34:39PM **17** process, we requested that that differential be reconciled down  
 02:34:45PM **18** to as small a number as possible by the time the audit was over,  
 02:34:48PM **19** and it was not.  
 02:34:49PM **20 Q.** Okay. Let's go to page 61 at the bottom. The third  
 02:35:02PM **21** specific finding on internal control issues deals with IIM  
 02:35:05PM **22** withdrawals. And here at the bottom of page 61 of Plaintiffs'  
 02:35:14PM **23** Exhibit 31 it says, A number of instances were noted in which  
 02:35:17PM **24** applications for withdrawal from IIM accounts were not signed by  
 02:35:21PM **25** either the accountholder or guardian. And then at the top of

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02:35:26PM **1** the next page it continues on and says, Management at one agency

02:35:35PM **2** office indicated that a signature is not required by current

02:35:38PM **3** regulations. In many cases money will be released based on a

02:35:42PM **4** telephone call with formal documentation to follow. Was this

02:35:46PM **5** adequate internal accounting controls over disbursements?

02:35:51PM **6** **A.** No.

02:35:52PM **7** **Q.** Why do you say that?

02:35:53PM **8** **A.** Well, you have -- there's no hurdle there to make sure that

02:36:00PM **9** the disbursement went to an appropriate party. If you're making

02:36:07PM **10** disbursements using phone calls as your basis for that support

02:36:09PM **11** and leaving documentation to follow as how you're going to

02:36:19PM **12** perfect that transaction, that's pretty much of a hit-and-miss

02:36:23PM **13** proposition.

02:36:24PM **14** **Q.** Mr. Ziler, I want to get you to identify three exhibits.

02:36:29PM **15** I'm not going to ask you other questions, but I just want you to

02:36:31PM **16** identify them here. Plaintiffs' Exhibit 32, if we could bring

02:36:34PM **17** up the first page, and once that's brought up can you identify

02:36:40PM **18** that and confirm that it's the report by Arthur Andersen on

02:36:44PM **19** compliance and internal controls for the next audit year, which

02:36:47PM **20** is the one that ended September 30th, 1989?

02:36:52PM **21** **A.** That's correct.

02:36:52PM **22** **Q.** Okay. Now, if you'll look at Plaintiffs' Exhibit 33, and I

02:37:00PM **23** want you to confirm that that's the report on compliance and

02:37:05PM **24** internal controls for 1990.

02:37:09PM **25** **A.** Yes.

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02:38:47PM **1** or not they agreed.

02:38:48PM **2** **Q.** And we've put together I guess twelve here. You see the

02:38:53PM **3** first one is a concern about not receiving disbursements checks.

02:38:58PM **4** Let's look at the next page. If you can highlight what's

02:39:04PM **5** written there. What was the problem here as you understood it

02:39:10PM **6** on behalf of Arthur Andersen?

02:39:12PM **7** **A.** Well, this person is stating that they received an account

02:39:18PM **8** statement that shows that monies are being withheld for

02:39:21PM **9** repayment of a loan that they had no knowledge of, so again,

02:39:31PM **10** this is -- we would have given all of these to the bureau

02:39:36PM **11** management for them to follow-up on, but it's an apparent

02:39:39PM **12** situation where the loan is reflected on this person's account

02:39:43PM **13** either didn't exist or it was somebody else's loan, or I suppose

02:39:48PM **14** the person could just be making this up, but it's certainly left

02:39:54PM **15** a lot to the imagination.

02:39:56PM **16** **Q.** But these are the type of responses that you were referring

02:39:59PM **17** to earlier when you indicated --

02:40:02PM **18** **A.** Correct.

02:40:02PM **19** **Q.** -- when you testified about the confirmations that were

02:40:06PM **20** received back?

02:40:07PM **21** **A.** Correct.

02:40:08PM **22** MR. DORRIS: Your Honor, we would move for admission

02:40:10PM **23** Plaintiffs' Exhibits 31 through 35.

02:40:13PM **24** THE COURT: 31 through 35 are received.

02:40:13PM **25** (Plaintiffs' Exhibit Nos. 31-35 received into evidence

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02:37:09PM **1** **Q.** Now, you've also described for the judge an issue there at

02:37:16PM **2** the Crown Point agency, and is that on the Navaho reservation?

02:37:21PM **3** **A.** Yes, it is.

02:37:22PM **4** **Q.** Can you bring up Plaintiffs' Exhibit 34, and look at the

02:37:26PM **5** next page. And can you confirm that those are the work papers

02:37:34PM **6** of Arthur Andersen with respect to this issue at the Crown Point

02:37:38PM **7** agency that you've described to Judge Robertson?

02:37:41PM **8** **A.** Yes, they are.

02:37:42PM **9** **Q.** And finally, would you pull up, please, Plaintiffs' Exhibit

02:37:46PM **10** 35? And is Plaintiffs' Exhibit 35 a sample of about ten or

02:38:00PM **11** fifteen of the responses that Arthur Andersen received back from

02:38:05PM **12** accountholders in connection with this confirmation that you

02:38:10PM **13** went through? Could you bring up the --

02:38:16PM **14** **A.** I can read it. I'm sorry. I can read it fine. Yes,

02:38:20PM **15** that's one of the positive confirmations we sent out.

02:38:22PM **16** **Q.** Now, when you say "positive confirmation," that's where you

02:38:26PM **17** send the confirmation asking them whether they agree or disagree

02:38:29PM **18** to respond?

02:38:30PM **19** **A.** Right. It would have accompanied the statement that they

02:38:32PM **20** received.

02:38:33PM **21** **Q.** I was asking that because when you say it's a positive

02:38:36PM **22** confirmation, that wasn't coming back and saying everything was

02:38:40PM **23** okay?

02:38:40PM **24** **A.** No. It was that's a definition I used previously, and a

02:38:44PM **25** positive confirmation is one where we ask for a response whether

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02:40:19PM **1** at about 2:40 p.m.)

02:40:19PM **2** MR. DORRIS: Thank you, Mr. Ziler.

02:40:58PM **3** THE COURT: Go ahead, Mr. Kirschman.

02:41:00PM **4** BY MR. KIRSCHMAN:

02:41:00PM **5** **Q.** Good afternoon, Mr. Ziler.

02:41:03PM **6** **A.** Good afternoon.

02:41:03PM **7** **Q.** I have some follow questions based on what you just

02:41:06PM **8** testified to.

02:41:06PM **9** **A.** Okay.

02:41:07PM **10** **Q.** Are you being paid to testify today?

02:41:11PM **11** **A.** Yes.

02:41:12PM **12** **Q.** And who are you being paid by?

02:41:16PM **13** **A.** The contract was, let's see, I believe signed by Elouise

02:41:24PM **14** Cobell. I can't remember the exact payment mechanism, but she

02:41:29PM **15** signed the contract.

02:41:30PM **16** **Q.** Okay. Your knowledge regarding the individual Indian money

02:41:38PM **17** trust fund is limited to your work with Arthur Andersen; is that

02:41:42PM **18** correct?

02:41:42PM **19** **A.** Correct.

02:41:42PM **20** **Q.** And you're testifying today to this Court about what you

02:41:46PM **21** know based on that work?

02:41:47PM **22** **A.** Correct.

02:41:48PM **23** **Q.** Is it correct to say that your work related to IIM trust

02:42:00PM **24** accounts ended in 1992?

02:42:04PM **25** **A.** Possibly not. That was, let's see, '88, '89. We finished

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02:42:10PM **1** the last audit probably in '91 and I continued on as managing  
 02:42:17PM **2** partner of the office where the work was being performed on up  
 02:42:23PM **3** to '99. At some point prior to '99 we stopped doing the work in  
 02:42:28PM **4** the office.  
 02:42:28PM **5** **Q.** I'm sorry. Some?  
 02:42:29PM **6** **A.** At some point prior to '99 I don't believe we were doing  
 02:42:33PM **7** any more work in the office on the IIM accounts.  
 02:42:37PM **8** **Q.** At some point, Mr. Ziler, you became Andersen's assurance  
 02:42:49PM **9** and business advisory services head, the head of Andersen's  
 02:42:55PM **10** assurance and business advisory services prior to 1994?  
 02:43:02PM **11** **A.** When I came to the Albuquerque office from the L.A. office  
 02:43:06PM **12** that was what I became. That would have been like in 1984, so I  
 02:43:13PM **13** ran the audit and business advisory services practice out of the  
 02:43:19PM **14** Albuquerque office for those years until I became managing  
 02:43:23PM **15** partner probably in '91, '92; something like that.  
 02:43:27PM **16** **Q.** Okay. And when you became managing partner did you have  
 02:43:31PM **17** any direct involvement in the IIM trust accounts?  
 02:43:35PM **18** **A.** Not as the point person, but probably had some continuing  
 02:43:39PM **19** general awareness of what was going on.  
 02:43:41PM **20** **Q.** Continuing what?  
 02:43:42PM **21** **A.** General awareness of what was going on. Other partners in  
 02:43:46PM **22** the office were working on it.  
 02:43:47PM **23** **Q.** But you did not perform any work related to those accounts?  
 02:43:50PM **24** **A.** Not directly.  
 02:43:51PM **25** **Q.** So it's fair to say that you did not do any work on these

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02:45:54PM **1** information, yes.  
 02:45:55PM **2** **Q.** Did you review it?  
 02:45:56PM **3** **A.** I skimmed it.  
 02:45:58PM **4** **Q.** For what purpose?  
 02:45:59PM **5** **A.** Just to get a general sense of what the status of the  
 02:46:04PM **6** process was.  
 02:46:05PM **7** **Q.** Now, you stated regarding the first audit for the period  
 02:46:22PM **8** ending September 30th, 1988 that you were requested to perform  
 02:46:28PM **9** that audit by the BIA, correct?  
 02:46:31PM **10** **A.** Correct.  
 02:46:31PM **11** **Q.** And in fact, I believe you testified that the BIA was aware  
 02:46:39PM **12** of its weaknesses, correct?  
 02:46:41PM **13** **A.** Correct.  
 02:46:41PM **14** **Q.** And did the BIA make it aware to you that they wanted to  
 02:46:46PM **15** correct those weaknesses?  
 02:46:47PM **16** **A.** Well, I believe the whole process was designed to help  
 02:46:52PM **17** guard their weaknesses and get a better inventory of them. I'm  
 02:46:57PM **18** not sure they were fully known, so I think the audit process  
 02:47:03PM **19** illuminated some things.  
 02:47:04PM **20** **Q.** Do you have any firsthand knowledge as to what BIA and the  
 02:47:08PM **21** Department of the Interior in general did subsequent to 1990 to  
 02:47:12PM **22** improve those processes?  
 02:47:13PM **23** **A.** I haven't kept track of that.  
 02:47:16PM **24** **Q.** Have you ever seen or heard of the record depository in  
 02:47:24PM **25** Lenexa, Kansas that houses documents?

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02:43:58PM **1** accounts prior to 1994?  
 02:44:00PM **2** **A.** Subsequent to '94 or?  
 02:44:03PM **3** **Q.** Prior to 1994, subsequent to 1994.  
 02:44:07PM **4** **A.** No.  
 02:44:07PM **5** **Q.** When was the last time you saw Plaintiffs' Exhibits 31  
 02:44:35PM **6** through I believe it's 35 prior to preparing for this trial?  
 02:44:40PM **7** **A.** Were those the confirmations?  
 02:44:43PM **8** **Q.** I'm sorry?  
 02:44:44PM **9** **A.** Were those the confirmation exhibits? I don't know what  
 02:44:47PM **10** they are.  
 02:44:47PM **11** **Q.** Those were all the documents you just reviewed with Mr.  
 02:44:50PM **12** Dorris. When was the last time you had seen those before you  
 02:44:53PM **13** prepared for your testimony today?  
 02:44:54PM **14** **A.** Oh, probably yesterday.  
 02:44:55PM **15** **Q.** Okay. And before that?  
 02:44:58PM **16** **A.** Some of the documents were sent to me a few weeks ago.  
 02:45:06PM **17** **Q.** Did you ask to see any documents?  
 02:45:09PM **18** **A.** Well, I was asked if I would provide some testimony on what  
 02:45:18PM **19** we saw during our audits, and the law firm sent me a set of  
 02:45:24PM **20** documents that they had for me to kind of review and refresh my  
 02:45:28PM **21** memory.  
 02:45:29PM **22** **Q.** In preparing to testify today, Mr. Ziler, did you see any  
 02:45:44PM **23** of the exhibits or review any of the transcripts from the  
 02:45:48PM **24** October 2007 trial in this case?  
 02:45:50PM **25** **A.** I believe I did receive it. I did receive that

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02:47:26PM **1** **A.** Something I saw referred to that.  
 02:47:34PM **2** **Q.** But that's the extent of your knowledge?  
 02:47:35PM **3** **A.** Yes.  
 02:47:35PM **4** **Q.** So your testimony today is limited to what Arthur Andersen  
 02:47:39PM **5** saw or reported up to 1999 -- I'm sorry. Up to September 1990?  
 02:47:47PM **6** **A.** Correct.  
 02:47:50PM **7** **Q.** For these audits what role did you personally play in  
 02:47:59PM **8** performance of the audit?  
 02:48:01PM **9** **A.** Well, I was the engagement partner, so I oversaw it, I  
 02:48:06PM **10** coordinated it, I reviewed the work papers, I conferred with  
 02:48:10PM **11** other concurring partners. I talked with all of our key staff  
 02:48:15PM **12** members on the team and interfaced with people at the bureau.  
 02:48:22PM **13** **Q.** In your role as engagement partner did you ever review any  
 02:48:28PM **14** of the confirmation letters?  
 02:48:29PM **15** **A.** Yes.  
 02:48:30PM **16** **Q.** Now, as a result of Andersen's audit work it was not your  
 02:49:01PM **17** conclusion that no audit or reconciliation could be performed  
 02:49:05PM **18** for all of the different types of IIM accounts, isn't that  
 02:49:14PM **19** correct?  
 02:49:14PM **20** **A.** Well, we were asked by Congressman Synard at one time to  
 02:49:19PM **21** give him an estimation of what we thought could be done and  
 02:49:22PM **22** could not be done.  
 02:49:23PM **23** **Q.** And do you recall telling the Congressman that you, Arthur  
 02:49:30PM **24** Andersen, believed that judgment accounts could possibly be  
 02:49:35PM **25** reconciled and audited?

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02:49:37PM **1 A.** Correct.

02:49:37PM **2 Q.** And that's because in that time frame there was enough

02:49:41PM **3** information and paperwork for judgment accounts, correct?

02:49:44PM **4 A.** Well, there were a couple of factors. A judgment account

02:49:49PM **5** usually doesn't have a long history, so it has a defined start

02:49:54PM **6** date that's within the recent enough past to where, you know,

02:50:01PM **7** the trust period is over a limited number of years versus

02:50:08PM **8** decades or centuries. So that was one factor. And another

02:50:13PM **9** factor was judgment accounts are usually from a single source

02:50:15PM **10** that makes the --

02:50:16PM **11 Q.** I'm sorry. I could not hear you.

02:50:19PM **12 A.** Judgment accounts are usually from a single source so that

02:50:23PM **13** the money, you can kind of anticipate what should be going into

02:50:26PM **14** the account. It makes it easier to tackle, and it did cover a

02:50:32PM **15** fairly large number of dollars, so we did recommend that this be

02:50:38PM **16** undertaken. I don't know what subsequently happened, if that

02:50:41PM **17** was done or not.

02:50:42PM **18 Q.** Do you recall in your communication with the Congressman

02:50:48PM **19** that you also suggested that, although there were issues

02:50:54PM **20** regarding the documentation, that nonjudgment award account-

02:51:00PM **21** holders should not be ignored?

02:51:02PM **22 A.** Oh, I'm sure we did say that.

02:51:08PM **23 Q.** And do you recall suggesting that account balances

02:51:14PM **24** exceeding a specific dollar amount should be analyzed to the

02:51:18PM **25** extent reasonably possible?

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02:52:58PM **1** Whether or not all trust accounts are audited and reconciled, we

02:53:02PM **2** believe that unidentified and unallocated balances exceeding a

02:53:07PM **3** specific dollar amount should be analyzed to the extent

02:53:09PM **4** reasonably possible in significant accounts for which account-

02:53:13PM **5** holders indicate disagreement or misunderstanding should be

02:53:15PM **6** analyzed and researched and discussed with the beneficiaries.

02:53:18PM **7** Do you see that?

02:53:18PM **8 A.** Yes.

02:53:19PM **9 Q.** Do you have any knowledge today whether in fact that work

02:53:23PM **10** has been done?

02:53:24PM **11 A.** Well, this was written in 1989, and I believe before the

02:53:31PM **12** end of the '90 audit, somewhere along that timeline, some of the

02:53:37PM **13** unallocated balances that had been hung up in the special

02:53:41PM **14** deposit accounts for years were analyzed and to the extent

02:53:45PM **15** possible the bureau made an effort to distribute some of those

02:53:48PM **16** funds, so to some extent I knew that part of the problem had

02:53:55PM **17** been resolved prior to the completion of our three-year

02:54:00PM **18** engagement. After that I lost track on it.

02:54:02PM **19 Q.** Okay. And for the record, this is an October 2nd, 1989

02:54:07PM **20** letter from Arthur Andersen to representative Mike Cynar,

02:54:12PM **21** Chairman of Environment, Energy and Natural Resource

02:54:22PM **22** Subcommittee.

02:54:23PM **23** You testified, Mr. Ziler, regarding the confirmation

02:54:46PM **24** requests.

02:54:48PM **25 A.** Yes.

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02:51:19PM **1 A.** I imagine. I don't remember that specifically, but that

02:51:23PM **2** seems like a suggestion we would have made. Going after the

02:51:29PM **3** large dollars first would make the most sense, yes.

02:51:31PM **4 Q.** Would it help your recollection if I showed you the letter

02:51:34PM **5** I'm referring to?

02:51:35PM **6 A.** That would be fine.

02:51:37PM **7** MR. KIRSCHMAN: Your Honor, may I approach the

02:51:38PM **8** witness?

02:51:38PM **9** THE COURT: You may.

02:51:40PM **10** MR. KIRSCHMAN: Your Honor, I was going to pass out

02:52:03PM **11** hard copies the old-fashioned way, but I believe we also have

02:52:06PM **12** this on the monitors

02:52:08PM **13** THE COURT: Let's hear it for monitors. The whole

02:52:10PM **14** idea of the monitors is to save all that walking. You'll have

02:52:14PM **15** to get your exercise some other way.

02:52:19PM **16** THE WITNESS: Thanks.

02:52:20PM **17** BY MR. KIRSCHMAN:

02:52:23PM **18 Q.** Mr. Ziler, I'll turn your attention to page five of the

02:52:28PM **19** letter.

02:52:28PM **20 A.** Okay.

02:52:29PM **21 Q.** And refer you to the second paragraph on that page. And it

02:52:40PM **22** is a letter that was signed by you; is that correct?

02:52:44PM **23 A.** I'm sure it is, yes.

02:52:48PM **24 Q.** In that paragraph you state: We do not believe, however,

02:52:55PM **25** that nonjudgment award accountholders should be ignored.

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02:54:48PM **1 Q.** Correct?

02:54:49PM **2 A.** Um-hmm.

02:54:50PM **3 Q.** And I apologize if I don't get this correct, but you called

02:54:58PM **4** them positive confirmations, right?

02:55:00PM **5 A.** Some of them were positives and some we called negative

02:55:04PM **6** confirmations. The negative confirmation is when a request is

02:55:10PM **7** printed on the statement asking the beneficiary if they didn't

02:55:14PM **8** agree with the account to please contact us.

02:55:18PM **9 Q.** Ask the beneficiary if they did not agree to please contact

02:55:30PM **10** Arthur Andersen?

02:55:31PM **11 A.** Right.

02:55:31PM **12 Q.** Okay. Plaintiffs' Exhibit 35 has I think Mr. Dorris said a

02:55:39PM **13** dozen confirmation letters. Which type are these? I note that

02:55:45PM **14** there's a paragraph that reads: If you do not return this page

02:55:48PM **15** to the auditors they will consider this statement to be correct.

02:55:53PM **16 A.** That was still a positive confirmation.

02:55:55PM **17 Q.** That's a positive one?

02:55:57PM **18 A.** Yes.

02:55:58PM **19 Q.** Now, how many positive confirmation letters went out?

02:56:05PM **20 A.** I'm going by vague memory, but it varied probably by year.

02:56:11PM **21** We did it every year I believe, but I believe what we did is we

02:56:16PM **22** sent positive confirmations to accountholders with balances over

02:56:20PM **23** fifty thousand, and I believe that at least in one year I just

02:56:30PM **24** remember seeing some of our documentation, the number was

02:56:33PM **25** somewhere around five hundred accounts.

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02:56:35PM **1 Q.** There were five hundred accounts over \$50,000?

02:56:37PM **2 A.** Right.

02:56:37PM **3 Q.** And these positive confirmation letters went out?

02:56:41PM **4 A.** To them.

02:56:42PM **5 Q.** And of those do you recall how many were returned?

02:56:46PM **6 A.** It's in the work papers that I've reviewed, but I don't

02:56:53PM **7** have that in my head right here. I think the response rate was

02:56:59PM **8** poor, but I can't tell you what the mix was. It might have been

02:57:06PM **9** 50/50; something like that.

02:57:09PM **10 Q.** You said the response rate was poor?

02:57:11PM **11 A.** Yeah. The response rate was probably around 50/50.

02:57:20PM **12 Q.** Do you know that or is that a guess?

02:57:20PM **13 A.** I'm just going by memory right now. Okay. The thing is,

02:57:25PM **14** we didn't take a whole lot of comfort in that because we knew

02:57:29PM **15** that there were a lot of problems with the address system that

02:57:31PM **16** the bureau was using. They had one system that had the

02:57:34PM **17** addresses in it and that didn't necessarily mesh with the system

02:57:38PM **18** that the confirmations were sent from so we had a low confidence

02:57:42PM **19** rate that the correct addresses were being used.

02:57:44PM **20 Q.** So even though this letter states if you're not returning

02:57:48PM **21** this page to the auditors, they will consider this statement to

02:57:51PM **22** be correct, you didn't put much stock in the fact that the

02:57:55PM **23** letters weren't returned?

02:57:57PM **24 A.** That didn't give us a lot of comfort, but because I think

02:58:01PM **25** that wording was used to encourage people to send the response.

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03:00:05PM **1 Q.** \$70 million for that one year?

03:00:07PM **2 A.** Um-hmm.

03:00:08PM **3 Q.** And just so I'm clear, that was money that was in the

03:00:12PM **4** tribal trust funds and then it was transferred to the IIM

03:00:16PM **5** accounts?

03:00:16PM **6 A.** Yes.

03:00:17PM **7 Q.** And do you recall if it was in fact transferred by the

03:00:20PM **8** tribes?

03:00:20PM **9 A.** By the tribes?

03:00:23PM **10 Q.** For the tribes.

03:00:24PM **11 A.** For the tribes? I don't have the detail information on

03:00:32PM **12** that, but I assume that if it went from the tribal trust funds

03:00:37PM **13** to the IIM accounts what that meant is that the tribes were the

03:00:42PM **14** initial recipient of the money and they knew that it needed to

03:00:46PM **15** be distributed down to the individual level so it was

03:00:49PM **16** transferred to the IIM accounts.

03:00:51PM **17 Q.** Was that a practice you saw in 1988, 1989, and 1990?

03:00:57PM **18 A.** Primarily 1988 I think.

03:00:59PM **19 Q.** In the earlier year?

03:01:01PM **20 A.** Yes.

03:01:01PM **21 Q.** Mr. Dorris showed you Plaintiffs' Exhibit 34, a work paper.

03:01:16PM **22** Had you seen that before this week?

03:01:18PM **23 A.** I'm not sure what No. 34 was.

03:01:22PM **24 Q.** Could you please put that up?

03:01:35PM **25 A.** Is that the Crown Point? Okay.

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02:58:05PM **1 Q.** So if you received a response it was bad news, and if you

02:58:09PM **2** didn't receive a response you didn't give it much weight?

02:58:13PM **3 A.** Probably not a lot. I'll tell you why. Because --

02:58:18PM **4 Q.** No, that's okay.

02:58:19PM **5 A.** Okay.

02:58:20PM **6 Q.** Is it a normal form of audit work to send out confirmation

02:58:39PM **7** letters?

02:58:39PM **8 A.** Yes.

02:58:40PM **9 Q.** So this wasn't an extraordinary step that Arthur Andersen

02:58:49PM **10** took because you were working with the BIA?

02:58:50PM **11 A.** No.

02:58:50PM **12 Q.** Did Arthur Andersen take any action to follow-up on these

02:58:53PM **13** responses when they were received?

02:58:55PM **14 A.** No, other than to provide copies of them to the bureau that

02:58:59PM **15** was beyond the scope of our work.

02:59:01PM **16 Q.** Do you recall, Mr. Ziler, if your work with Arthur Andersen

02:59:31PM **17** demonstrated that large amounts of tribal trust funds would

02:59:36PM **18** leave from the IIM system?

02:59:41PM **19 A.** No. I believe it was to the contrary. I believe a lot of

02:59:45PM **20** money came into the tribal trust system that went into the IIM

02:59:49PM **21** accounts.

02:59:49PM **22 Q.** I'm sorry. Again could you repeat that?

02:59:52PM **23 A.** What you asked me. I believe the 1988 financial

02:59:57PM **24** statements, for instance, showed net transfers from the tribal

03:00:01PM **25** system to the IIM system of about \$70 million.

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03:01:45PM **1 Q.** I cannot tell you standing here, Mr. Ziler.

03:01:48PM **2 A.** It is.

03:01:49PM **3** MR. DORRIS: It is, your Honor. 34 was with Crown

03:01:52PM **4** Point Navaho issue with the checks.

03:02:01PM **5** THE COURT: The question is, had you seen it before a

03:02:03PM **6** few days ago?

03:02:04PM **7** THE WITNESS: Saturday or Sunday. I don't remember.

03:02:12PM **8** BY MR. KIRSCHMAN:

03:02:13PM **9 Q.** I'm sorry?

03:02:13PM **10 A.** I saw them Saturday or Sunday.

03:02:15PM **11** THE COURT: I think his question is: Did you see them

03:02:18PM **12** back when they were being developed and worked on?

03:02:20PM **13** THE WITNESS: I saw portions of them. I'm not sure I

03:02:22PM **14** saw all of them. Obviously I signed the contract amendment and

03:02:25PM **15** I had seen probably top-level memos. I'm not sure I went

03:02:30PM **16** through every work paper.

03:02:31PM **17** BY MR. KIRSCHMAN:

03:02:31PM **18 Q.** But my question is regarding this group of papers.

03:02:34PM **19 A.** Yes.

03:02:35PM **20 Q.** Was this group sent to you?

03:02:37PM **21 A.** No.

03:02:37PM **22 Q.** Is this papers that you had in your possession?

03:02:40PM **23 A.** No.

03:02:41PM **24 Q.** How did you come upon these papers Saturday or Sunday?

03:02:45PM **25 A.** From Plaintiffs' lawyers.

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03:02:48PM **1 Q.** And they provided you that pack of documents?

03:02:51PM **2 A.** Correct.

03:02:52PM **3 Q.** And why did they do that?

03:02:54PM **4 A.** To refresh my memory about that incident.

03:02:58PM **5 Q.** I see. Did you ask them to refresh your memory with those

03:03:02PM **6** documents?

03:03:03PM **7 A.** We talked in general about how many instances of fraud we

03:03:06PM **8** could remember, and I said, you know, twenty years ago? I

03:03:10PM **9** didn't remember that much, and they showed me this set of

03:03:16PM **10** documents because I think it was the only information that they

03:03:19PM **11** had specifically they could use to refresh my memory.

03:03:24PM **12 Q.** Related to fraud generally?

03:03:26PM **13 A.** To specific fraud work that Arthur Andersen performed.

03:03:31PM **14 Q.** Okay. I believe you said that the woman who had written

03:03:46PM **15** these checks was caught by the IG?

03:03:48PM **16 A.** She was interviewed by the IG.

03:03:52PM **17 Q.** Do you recall how this matter resolved itself, how it was

03:03:59PM **18** resolved?

03:03:59PM **19 A.** No.

03:03:59PM **20 Q.** Do you know if the woman was required to repay the money?

03:04:02PM **21 A.** I don't.

03:04:02PM **22 Q.** Do you know if she was required to serve any prison time?

03:04:07PM **23 A.** I don't.

03:04:10PM **24 Q.** Did I understand you correctly that a worker first noticed

03:04:16PM **25** a high volume of dollars and reported this to the IG?

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03:06:12PM **1** staff itself?

03:06:13PM **2 A.** Yes.

03:06:13PM **3 Q.** And did they tell you that upon discovering that that the

03:06:17PM **4** \$2 million in interest was then credited to the accounts?

03:06:22PM **5 A.** No, it was not.

03:06:24PM **6 Q.** It was not?

03:06:24PM **7 A.** That's my understanding.

03:06:26PM **8 Q.** And what's that based on?

03:06:28PM **9 A.** It is based on a twenty-year recollection and reading the

03:06:37PM **10** financial statement footnote saying there was \$2 million of

03:06:40PM **11** foregone interest that was gone and lost forever because it was

03:06:43PM **12** not invested and there was no way to recover interest on money

03:06:48PM **13** that was not invested.

03:06:49PM **14 Q.** Okay.

03:07:32PM **15** MR. KIRSCHMAN: One moment, your Honor.

03:07:33PM **16** (There was a pause in the proceedings.)

03:07:37PM **17** MR. KIRSCHMAN: Your Honor, I have no other questions

03:07:48PM **18** for Mr. Ziler.

03:07:49PM **19** I would like to mark if I could and introduce the

03:07:51PM **20** letter to Congressman Cynar as DX 465 and move that into

03:07:57PM **21** evidence.

03:07:58PM **22** THE COURT: DX 465 will be received.

03:08:03PM **23** MR. KIRSCHMAN: Thank you, Mr. Ziler.

03:08:05PM **24** THE WITNESS: Thank you.

03:08:05PM **25** (Exhibit No. DX 465 received into evidence at about

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03:04:20PM **1 A.** No.

03:04:20PM **2 Q.** Okay. Could you refresh my memory?

03:04:23PM **3 A.** Just from reading those documents it appeared what happened

03:04:26PM **4** was the account beneficiary made an inquiry because it didn't

03:04:30PM **5** look like the money was getting into her account that she had

03:04:34PM **6** expected. I think she started the whole investigation off.

03:04:36PM **7 Q.** I see. And do you recall if that account beneficiary then

03:04:40PM **8** received the balance that she was owed?

03:04:43PM **9 A.** I don't know that.

03:04:44PM **10 Q.** You don't know?

03:04:45PM **11 A.** We weren't involved in any restitution process.

03:05:14PM **12** MR. KIRSCHMAN: One second, your Honor, please.

03:05:20PM **13** (There was a pause in the proceedings.)

03:05:30PM **14** BY MR. KIRSCHMAN:

03:05:31PM **15 Q.** You testified about the fact that for a six-month period, I

03:05:39PM **16** believe in, I believe, 1988, that no notification deposits were

03:05:43PM **17** transmitted to treasury from the Department of the Interior; is

03:05:49PM **18** that correct?

03:05:49PM **19 A.** I believe it was 1986.

03:05:51PM **20 Q.** 1986?

03:05:53PM **21 A.** The specific facts are in the financial statements, and I

03:05:57PM **22** don't know the specific amount. All I know is that the

03:06:02PM **23** quantification of estimated lost interest was \$2 million for

03:06:05PM **24** that period.

03:06:07PM **25 Q.** And you were informed of that by the Department of Interior

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03:08:08PM **1** 3:08 p.m.)

03:08:08PM **2** THE COURT: Anything further, Mr. Dorris?

03:08:10PM **3** MR. DORRIS: I have no further questions for Mr.

03:08:12PM **4** Ziler.

03:08:12PM **5** I would just note for the record, your Honor, the work

03:08:15PM **6** papers of Plaintiffs' Exhibit 34 was previously admitted in

03:08:20PM **7** trial 1.5 as Plaintiffs' Exhibit 102 there, and would I just

03:08:24PM **8** note that for the record, but I have no further questions for

03:08:28PM **9** Mr. Ziler.

03:08:30PM **10** THE COURT: Mr. Ziler, you're excused. Thank you,

03:08:33PM **11** sir.

03:08:33PM **12** THE WITNESS: Thank you.

03:08:35PM **13** (Witness excused at about 3:09 p.m.)

03:08:36PM **14** THE COURT: Now, before we go any further, I'm going

03:08:38PM **15** to ask counsel to convene a little seminar here. I wish we

03:08:46PM **16** could do this in jury cases. I want to know what the testimony

03:08:55PM **17** we've just heard adds to the Plaintiffs' case and where it fits

03:08:59PM **18** the Plaintiffs' case. I mean, it was previously noted in my

03:09:05PM **19** opinion back in January about the Arthur Andersen audit in 1988

03:09:10PM **20** and 1989. We knew that. We knew about the unreliability. I

03:09:15PM **21** don't know what the testimony was about or how it advances the

03:09:18PM **22** Plaintiffs' position in this case. I don't know what the

03:09:21PM **23** cross-examination was about, so teach me, guys.

03:09:24PM **24** MR. DORRIS: I'll give that a shot, your Honor.

03:09:26PM **25** Really in two ways that it's significant to our case that is at

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03:09:32PM **1** issue here in this hearing. The first goes to a very funda-  
 03:09:36PM **2** mental part of our case, which is that money can be in the  
 03:09:40PM **3** treasury without being accounted for by BIA and that there are  
 03:09:44PM **4** no reconciliation processes that go on between the two of them.  
 03:09:50PM **5** For example, there is the instance that he testified about where  
 03:09:53PM **6** money came in to treasury, was not -- was deposited into  
 03:09:58PM **7** treasury from IIM funds and was not accounted for by BIA and  
 03:10:06PM **8** that treasury didn't even know that had to do with the IIM  
 03:10:09PM **9** trust, so that's point number one.  
 03:10:11PM **10** The second point is that -- well, really three points.  
 03:10:15PM **11** The second --  
 03:10:16PM **12** THE COURT: How am I supposed to make use of that?  
 03:10:19PM **13** What we have on that point is one man's recollection of what  
 03:10:22PM **14** happened twenty years ago. We've got no documentation, we've  
 03:10:25PM **15** got no quantification. What am I supposed to do with it?  
 03:10:30PM **16** Remember we're trying to put a number together here. How does  
 03:10:33PM **17** it help me put a number together?  
 03:10:35PM **18** MR. DORRIS: Well, first of all, that it's not just  
 03:10:38PM **19** that one incident that's important. What's also important is  
 03:10:44PM **20** that you have -- we will be looking at BIA records, and  
 03:10:49PM **21** essentially treasury was their bank, and there's no  
 03:10:53PM **22** reconciliation between BIA records and what cash was actually  
 03:10:58PM **23** deposited in the treasury throughout the course of that this  
 03:11:03PM **24** time, so that doesn't help you actually quantify the number, but  
 03:11:07PM **25** it is an underlying premise for part of what we hope to prove

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03:13:09PM **1** quantification, but we hope that it puts some of the numbers  
 03:13:12PM **2** you'll hear into the proper context and will be important for  
 03:13:17PM **3** you we believe as you begin to try to judge the burdens and who  
 03:13:20PM **4** has met their burden and who has not.  
 03:13:24PM **5** THE COURT: All right.  
 03:13:26PM **6** Do you want to add or subtract anything from that, Mr.  
 03:13:30PM **7** Kirschman?  
 03:13:30PM **8** MR. KIRSCHMAN: Well, your Honor, I would just note  
 03:13:32PM **9** that I only objected once but it was to a line of questioning  
 03:13:35PM **10** that we did not believe were relevant that was relevant to this  
 03:13:40PM **11** trial. So we did not see the relevance of Mr. Ziler's  
 03:13:47PM **12** testimony. The basis of the cross-examination once you allowed  
 03:13:50PM **13** the testimony was to demonstrate that he was testifying from a  
 03:13:54PM **14** twenty-year old memory and that his knowledge was limited to  
 03:14:02PM **15** events well before the passage of the '94 act, and that to the  
 03:14:05PM **16** extent he spoke with specificity he was doing so based on a  
 03:14:08PM **17** document that plaintiffs had sent him which they had in their  
 03:14:11PM **18** possession to help establish I guess one singular case of fraud,  
 03:14:17PM **19** so that was the purpose of the cross, and we agree, we do not  
 03:14:22PM **20** see the relevance of that testimony.  
 03:14:24PM **21** THE COURT: All right.  
 03:14:25PM **22** MR. KIRSCHMAN: Regarding the government's burden, I  
 03:14:27PM **23** think plaintiffs' counsel has it backwards but they have to  
 03:14:30PM **24** present a case and that has not been done yet.  
 03:14:38PM **25** THE COURT: Okay. Look, there are only two people in

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03:11:11PM **1** when we do get around to proving a number, which is that there's  
 03:11:15PM **2** more money in treasury that has come in than has been paid out.  
 03:11:22PM **3** THE COURT: All right.  
 03:11:23PM **4** MR. DORRIS: The second of -- I guess it's really  
 03:11:26PM **5** three areas, but I guess the last two points go to the same  
 03:11:32PM **6** issue, which goes to some extent to perhaps it's anticipating,  
 03:11:38PM **7** since we called this witness, a little bit of the government's  
 03:11:42PM **8** burden, which is as we look at these entries from the automated  
 03:11:48PM **9** accounts that we will do in which they rely on when they prepare  
 03:11:54PM **10** AR-171, they revised it on May 30th, and they gave us another  
 03:11:59PM **11** revision last Friday night at 6:30, that those rely on automated  
 03:12:05PM **12** systems, the reliability of which is questionable such that as  
 03:12:12PM **13** you go to make this calculation and quantification it doesn't  
 03:12:17PM **14** help you with the math but it helps provide you with the  
 03:12:21PM **15** underlying information that it is from those very systems that  
 03:12:25PM **16** he audited and found from a C.P.A.'s standpoint as being  
 03:12:31PM **17** unreliable. It is from those same systems that the government  
 03:12:34PM **18** is pulling their numbers. I don't think that that is  
 03:12:39PM **19** satisfactory for them to make the burden that they will have in  
 03:12:43PM **20** this case. However, from the Plaintiffs' standpoint we can  
 03:12:46PM **21** essentially use that information from their own systems as an  
 03:12:49PM **22** admission by them of at least at a minimum of what is there so  
 03:12:54PM **23** it puts into context the evidence that will have to do with the  
 03:12:59PM **24** quantification. I admit it does not have direct bearing on  
 03:13:04PM **25** how -- on what numbers you add up in a column to get to that

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03:14:40PM **1** this room whose continued presence is mandatory, and I'm one of  
 03:14:47PM **2** them and the court reporter is the other one, and till and  
 03:14:52PM **3** unless the court reporter or myself think it's time for a break,  
 03:14:55PM **4** we're just going to keep plugging right along.  
 03:15:03PM **5** You've got the right report?  
 03:15:04PM **6** MR. HARPER: I'm fine.  
 03:15:05PM **7** THE COURT: You're fine. Let's go. Call your next  
 03:15:07PM **8** witness.  
 03:15:41PM **9** MR. HARPER: Good afternoon, sir.  
 03:15:42PM **10** Plaintiffs call Ms. Mona Infield.  
 03:15:46PM **11** THE COURT: Ms. Infield, we haven't used this device  
 03:15:48PM **12** for some time. Do you know if it works?  
 03:15:50PM **13** MS. INFIELD: I brought my cane with me today, your  
 03:15:53PM **14** Honor, so I'll be fine.  
 03:15:54PM **15** THE COURT: All right. Thank you, ma'am. I can't  
 03:16:01PM **16** tell you how much money we spent for those lifts, and I don't  
 03:16:04PM **17** think they've been used more than twice in the whole courthouse  
 03:16:06PM **18** in two years, and I'm not sure they work, to be honest with you.  
 03:16:23PM **19** COURTROOM DEPUTY: Please raise your right hand. Do  
 03:16:24PM **20** you solemnly swear that the testimony you should give to the  
 03:16:26PM **21** Court in this case now on trial should be the truth, the whole  
 03:16:29PM **22** truth and nothing but the truth so help you God?  
 03:16:31PM **23** MS. INFIELD: I do.  
 03:16:32PM **24** COURTROOM DEPUTY: Thank you.  
 03:16:32PM **25** MONA INFIELD, WITNESS FOR THE PLAINTIFF, SWORN

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03:16:34PM **1** DIRECT EXAMINATION

03:16:34PM **2** BY MR. HARPER:

03:16:36PM **3** **Q.** Good afternoon, Ms. Infield.

03:16:38PM **4** **A.** Good afternoon.

03:16:39PM **5** **Q.** Could you please state your name and spell your last name

03:16:42PM **6** for the record?

03:16:42PM **7** **A.** Mona B. Infield, I-n-f-i-e-l-d.

03:16:48PM **8** **Q.** And could you tell me where you reside?

03:16:52PM **9** **A.** I reside in Chorales, New Mexico, just outside of

03:16:59PM **10** Albuquerque.

03:16:59PM **11** **Q.** Where are you currently employed?

03:17:00PM **12** **A.** I'm currently with the Bureau of Indian Affairs at the

03:17:06PM **13** Albuquerque data center in the Office of Operations.

03:17:10PM **14** **Q.** Have you been -- how long have you been a government

03:17:15PM **15** employee?

03:17:15PM **16** **A.** I started my government career 26 years and one week ago

03:17:18PM **17** today.

03:17:18PM **18** **Q.** And I just would like to start by outlining a little bit of

03:17:24PM **19** your experience with the government for the Court. Could you

03:17:29PM **20** tell me what your first position was and where it was at?

03:17:32PM **21** **A.** My first position was as a clerk-typist with the appraisals

03:17:36PM **22** office in the Osage agency in Pahos, Oklahoma. I also did some

03:17:43PM **23** clerk work for the adult vocational education program and the

03:17:47PM **24** Social Services program at that time. I then moved into the

03:17:51PM **25** realty shop as a realty clerk. And then I left government

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03:19:29PM **1** invested and subsequently disbursed to the annuitants, Osage

03:19:36PM **2** estate, and there are -- at the Osage allotment there were 2,229

03:19:43PM **3** allotted Osages that received their surface ownership of land

03:19:48PM **4** and their one head right share of the mineral estate.

03:19:52PM **5** **Q.** And when you say the annuitants, are you familiar with the

03:19:58PM **6** term the Osage Annuity Account?

03:20:01PM **7** **A.** Yes. That's generally how the treasury account that all

03:20:05PM **8** these funds are collected into as they come in or is referred

03:20:09PM **9** to.

03:20:10PM **10** **Q.** And the annuitants in that annuity account, who are they?

03:20:14PM **11** **A.** The annuitants are the shareholders, the people who own the

03:20:18PM **12** head right shares.

03:20:19PM **13** **Q.** Are they exclusively individual Indians?

03:20:22PM **14** **A.** Well, no. Mostly individual Indians. You do have some

03:20:26PM **15** nonIndians, you have some charity organizations, some faith-

03:20:30PM **16** based organizations that have inherited shares of the head right

03:20:33PM **17** over the years.

03:20:35PM **18** **Q.** And what was your personal involvement in the management of

03:20:39PM **19** the Osage annuity account?

03:20:41PM **20** **A.** Well, I worked closely with the people that were

03:20:45PM **21** distributing the money to the annuitants at each quarter.

03:20:50PM **22** Quarterly payments are made from that annuity account to those

03:20:53PM **23** head right shareholders. Now, realizing an allotment time they

03:20:59PM **24** were allotted 2,229 shares each to an individual Osage Indian on

03:21:05PM **25** the role at that time. When I went to work for the agency in

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03:17:55PM **1** service and went to work for the Osage tribe on a 638 contract

03:17:59PM **2** where they were performing minerals function for the Bureau of

03:18:04PM **3** Indian Affairs. I worked as a clerk in the minerals office and

03:18:07PM **4** then became the senior systems operator for the computer systems

03:18:12PM **5** on that 638 contract at Osage.

03:18:16PM **6** **Q.** When you say the "minerals office," could you explain

03:18:19PM **7** exactly what the minerals office did?

03:18:22PM **8** **A.** Well, Osage is a little different from the rest of the

03:18:25PM **9** Bureau of Indiana Affairs in that not only does the agency take

03:18:29PM **10** care of the leasing activities for minerals production but they

03:18:34PM **11** also take care of the oil, gas, accounting, which in the rest of

03:18:39PM **12** the bureaus is handled by the minerals service, and they also

03:18:42PM **13** handle the field work, which for the rest of them is handled by

03:18:47PM **14** the Osage agency, is fairly self-contained as far as their oil

03:18:50PM **15** and gas operation is concerned. They do not use minerals

03:18:54PM **16** management purposes for accounting purposes. They do not use

03:18:58PM **17** BLM for field purposes.

03:18:59PM **18** **Q.** When you say the minerals, what minerals are you talking

03:18:59PM **19** about?

03:19:02PM **20** **A.** Oil and gas and some hard rock minerals, sand, gravel; you

03:19:07PM **21** know, things like that.

03:19:07PM **22** **Q.** And who do these -- what happens with the proceeds from

03:19:13PM **23** these minerals?

03:19:14PM **24** **A.** The share that belongs to the shareholders is collected by

03:19:24PM **25** the agency and forwarded to a treasury account where it's

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03:21:08PM **1** 1982 there had been some error made over the years in estate

03:21:14PM **2** distributions and so we were not distributing a full 2,229

03:21:19PM **3** shares. We were distributing 2,228.97393 shares, and that is

03:21:26PM **4** today still the number of shares that are distributed on a

03:21:31PM **5** quarterly basis.

03:21:32PM **6** **Q.** So that fraction of a share, do you know what happened to

03:21:34PM **7** that fraction of a share?

03:21:34PM **8** **A.** We have -- nobody knows. Nobody has ever taken the time to

03:21:39PM **9** go back to discover when it was lost or how it was lost.

03:21:41PM **10** **Q.** We'll get further into specific Osage issues in a moment,

03:21:48PM **11** but I do want to continue down with your work history before we

03:21:53PM **12** get into the specifics. Could you tell me at what point did you

03:21:56PM **13** leave the Osage agency office?

03:21:58PM **14** **A.** I worked for the tribe on the 638 contract until October of

03:22:01PM **15** 1987, at which time I came back into the bureau in Muskogee,

03:22:12PM **16** Oklahoma, and the Muskogee area office was what today they term

03:22:16PM **17** as a regional office, and it encompassed the oversight for the

03:22:21PM **18** Miami agency, the Osage agency, and those agencies for the five

03:22:26PM **19** civilized tribes.

03:22:27PM **20** **Q.** And what was your position at the Muskogee area office?

03:22:39PM **21** **A.** I was a computer specialist, and actually I was the only

03:22:39PM **22** computer specialist in the Muskogee area office at the time. We

03:22:41PM **23** had an information management center that provided some services

03:22:43PM **24** out of the Anadarko area office, and that's where they ran the

03:22:51PM **25** IRMS system for Anadarko and Muskogee was in the Anadarko

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03:22:57PM **1** information management center.

03:22:57PM **2 Q.** For the court reporter I'm going to restate, you mentioned

03:23:00PM **3** an acronym, and that's IRMS, correct?

03:23:04PM **4 A.** The integrated records management system.

03:23:07PM **5 Q.** And what is IRMS and how is IRMS related to individual

03:23:15PM **6** Indian trusts?

03:23:17PM **7 A.** Well, at its conception IRMS was a set of subsystems that

03:23:24PM **8** were interrelated by ID number where you would have the account,

03:23:27PM **9** the individual Indian money account for an individual. You

03:23:32PM **10** would have their people record and the people subsystem which

03:23:37PM **11** would show their heritage and their blood quantum and their

03:23:41PM **12** decadency and their education and other things about their

03:23:46PM **13** background and demographics, and you would also have ownership

03:23:49PM **14** records that showed by that ID number what piece of -- which

03:23:54PM **15** trust property was owned by that person, and those ownership

03:23:58PM **16** records were also retrievable by track number so that you could

03:24:03PM **17** get to a specific piece of land, and then you have the lease

03:24:06PM **18** subsystem which held all of the lease instruments that had been

03:24:11PM **19** approved and were being operated under for trust income to be

03:24:17PM **20** received on those -- on the trust property.

03:24:20PM **21 Q.** And we'll get a little bit more into the IRMS system after

03:24:24PM **22** we get through your history here and experience.

03:24:27PM **23** As a computer specialist at the Muskogee area office,

03:24:31PM **24** did you then become familiar with the integrated resource

03:24:37PM **25** management system?

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03:26:16PM **1** THE COURT: All right, go ahead.

03:26:18PM **2** MR. HARPER: Thank you.

03:26:18PM **3** BY MR. HARPER:

03:26:20PM **4 Q.** We'll talk more about the IRMS system and some of the

03:26:26PM **5** importance for this particular trial, Ms. Infield, but moving

03:26:29PM **6** from the Muskogee area office, what was your next position at

03:26:34PM **7** the Department of Interior?

03:26:35PM **8 A.** In August of 1991 I took a position in the data center in

03:26:41PM **9** Albuquerque, New Mexico as a programmer.

03:26:43PM **10 Q.** And what is the data center?

03:26:44PM **11 A.** The data center at that time was where we housed all of the

03:26:51PM **12** computer systems used nationwide by the Bureau of Indian Affairs

03:26:57PM **13** with the exception of those IRMS and auto systems. They were

03:27:02PM **14** out of six information management systems at the time. Those

03:27:06PM **15** IRMS or information management centers, those systems were

03:27:09PM **16** brought into the data center in the '90s so that now it's all

03:27:14PM **17** operated centrally in a data center.

03:27:18PM **18 Q.** And what additional positions have you had since that time

03:27:22PM **19** in Albuquerque?

03:27:23PM **20 A.** I was first -- my first job was as a programmer for the

03:27:27PM **21** royalty distribution and reporting system. I was then the team

03:27:31PM **22** leader for the IRMS programmers. I became a section chief for

03:27:36PM **23** data management and scheduling. I was acting as the branch

03:27:41PM **24** chief for the applications support branch, which was all of the

03:27:47PM **25** programmers for all of the applications used.

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03:24:38PM **1 A.** I actually got my first training in IRMS when I was at

03:24:42PM **2** Osage, and in probably late '82 or early '83 because no one in

03:24:50PM **3** the Muskogee regional area was using IRMS at the time and

03:24:55PM **4** computers were fairly new to the bureau. As a matter of fact,

03:24:58PM **5** the personal computers were pretty much nonexistent at that

03:25:01PM **6** point in time so we used -- we were trained to use IRMS, and it

03:25:06PM **7** was such an antiquated system at that time that we didn't even

03:25:10PM **8** have data entry screens. We would take information from, for

03:25:14PM **9** instance, an IIM jacket folder and put the information off of

03:25:18PM **10** that on to a code sheet, and then you would take the code sheet

03:25:23PM **11** to the computer and sit down and in code an 80-character stream

03:25:28PM **12** of letters and/or numbers across the screen and that's how you

03:25:30PM **13** got data into the system.

03:25:34PM **14** MR. KIRSCHMAN: Your Honor, continuing objection to

03:25:36PM **15** the relevance of this testimony, and we'd also point out that

03:25:41PM **16** this is very much repetitive of testimony Ms. Infield supplied

03:25:47PM **17** this Court in October of last year.

03:25:49PM **18** THE COURT: Yes. I'm looking at my notes of her

03:25:52PM **19** testimony when she was here before me, and I really don't have

03:25:56PM **20** to have that repeated, but I'll allow some leeway here, Mr.

03:26:00PM **21** Harper.

03:26:02PM **22** MR. HARPER: Thank you, your Honor. I won't spend too

03:26:04PM **23** much time on the background. I think the basis of some of the

03:26:07PM **24** more substantive questions, I wanted to give the Court a little

03:26:12PM **25** sense of some of the experiences Ms. Infield has had.

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03:27:50PM **1 Q.** And in the mid-1990s when there started to be the Office of

03:27:56PM **2** Special Trustee offices was created pursuant to the '94 act, did

03:28:02PM **3** you have any particular role with respect to the OST and the

03:28:05PM **4** trust reform effort?

03:28:06PM **5 A.** I took a detail and then applied for a permanent position

03:28:11PM **6** in the Office of Trust Funds Management. About the same time or

03:28:15PM **7** maybe right before I was removed from the Bureau of Indiana

03:28:19PM **8** Affairs and put in the Office of the Special Trustee.

03:28:22PM **9 Q.** Were you involved in any projects that allowed you to

03:28:31PM **10** review the systems and procedures used within the Bureau of

03:28:37PM **11** Indiana Affairs for the management of trust assets and funds?

03:28:42PM **12 A.** I was in charge of the Whereabouts Unknown project where we

03:28:46PM **13** tried to locate accountholders that we did not have a good

03:28:50PM **14** address for. I also worked on several IIM reform projects, or

03:28:57PM **15** trust reform projects as they later became known. I was also

03:29:01PM **16** the coordinator for the federal tribal task force that went

03:29:05PM **17** around the country and took -- did tribal and individual

03:29:09PM **18** consultation on the problems with the trust systems and we

03:29:15PM **19** gathered all the problems together. The task force came back

03:29:18PM **20** together. We prioritized the problems and that subsequently

03:29:22PM **21** became the basis for Paul Homan's first strategic plan for

03:29:28PM **22** Office of the Special Trustee.

03:29:29PM **23 Q.** I'd like to step back now and discuss one of your earlier

03:29:33PM **24** experiences, and you mentioned your experience at the Osage, and

03:29:36PM **25** talk a little bit about the Osage annuity account. From where

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03:29:42PM **1** were those funds derived that were placed in the Osage annuity  
 03:29:46PM **2** account?  
 03:29:46PM **3 A.** Those were royalties on oil and gas production. Sand,  
 03:29:52PM **4** gravel, limestone, salt water disposal easements and things like  
 03:29:56PM **5** that for the mineral estate.  
 03:29:58PM **6 Q.** And you said at one point you were working for BIA and then  
 03:30:01PM **7** you were also working for the tribe under a 638 contract?  
 03:30:06PM **8 A.** Yes.  
 03:30:06PM **9 Q.** In both those roles you had you worked with --  
 03:30:12PM **10 A.** I worked on the annuity system, yes.  
 03:30:14PM **11 Q.** The funds in the annuity system, did you at the time -- who  
 03:30:19PM **12** did you think those funds belonged to?  
 03:30:21PM **13 A.** The annuitants, the head right shareholders.  
 03:30:24PM **14 Q.** And who were they?  
 03:30:25PM **15 A.** They belonged to the head right shareholders at allotment  
 03:30:29PM **16** time.  
 03:30:29PM **17 Q.** When you described earlier is mostly individual Indians?  
 03:30:32PM **18 A.** Yes.  
 03:30:33PM **19 Q.** At the time did you ever hear anybody suggest that those  
 03:30:39PM **20** funds belonged actually to the tribe by and large?  
 03:30:41PM **21 A.** No. No, and that's the general understanding, and the  
 03:30:47PM **22** culture at Osage was that those funds belonged to the head right  
 03:30:51PM **23** shareholders and the counsel was allowed to use a certain  
 03:30:55PM **24** percentage of the interest earned on those funds to operate the  
 03:31:00PM **25** minerals counsel from, but other than that, the shareholders

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03:32:38PM **1 Q.** Ms. Infield, just a final question on that. Would it  
 03:32:41PM **2** surprise you to hear that there is an assertion that those are  
 03:32:47PM **3** actually tribal trust funds?  
 03:32:49PM **4** MR. STEMPLEWICZ: Same objection; relevance.  
 03:32:51PM **5** THE COURT: Overruled.  
 03:32:52PM **6** THE WITNESS: Yes, it would be very surprising to me  
 03:32:54PM **7** to hear that those were actually tribal trust funds.  
 03:32:57PM **8** BY MR. HARPER:  
 03:33:01PM **9 Q.** I'd like to now turn your attention to some of the efforts  
 03:33:04PM **10** that you made when you were working on trust reform projects and  
 03:33:11PM **11** some of your observations there. Did you have any involvement  
 03:33:16PM **12** in the Tiger Team report?  
 03:33:18PM **13 A.** I did. I was a member of the Tiger Team, yes.  
 03:33:24PM **14** MR. HARPER: And, your Honor, we have marked for  
 03:33:27PM **15** Plaintiffs' Exhibit 30 the Tiger Team report.  
 03:33:27PM **16** BY MR. HARPER:  
 03:33:33PM **17 Q.** And I just want to show you a couple of items on the second  
 03:33:37PM **18** page of the report. You can see that, Ms. Infield, that that is  
 03:33:42PM **19** the executive summary. If we can go down to the section called  
 03:33:49PM **20** Problems in the third heading. So you were involved in the  
 03:33:58PM **21** investigations and the evaluation that led to these conclusions,  
 03:34:01PM **22** is that true?  
 03:34:02PM **23 A.** That's correct.  
 03:34:02PM **24 Q.** I'd like to look at two of them. Number one, excuse me.  
 03:34:10PM **25** I'm sorry. Number two. Data records are outdated and/or

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03:31:04PM **1** were the owners of the money.  
 03:31:06PM **2 Q.** Did the tribe have any head rights of their own?  
 03:31:11PM **3 A.** They have a few, I think. They did have then or a piece of  
 03:31:17PM **4** one or a piece of two. A handful maybe.  
 03:31:19PM **5 Q.** And you said that they also had in addition to that the  
 03:31:22PM **6** ability to use a certain percentage of the earnings?  
 03:31:27PM **7 A.** The interest earned on those deposits, yes.  
 03:31:29PM **8 Q.** And do you know about what percent that was?  
 03:31:32PM **9 A.** I think it was somewhere around one-and-a-half percent.  
 03:31:35PM **10 Q.** And other than those two, the few head rights that they  
 03:31:40PM **11** have out the 2,229 and the one-and-a-half percent they could  
 03:31:46PM **12** utilize from the earnings, was the tribe able to spend any of  
 03:31:51PM **13** the other monies?  
 03:31:52PM **14 A.** No.  
 03:31:53PM **15 Q.** And was there ever a suggestion by any tribal officials  
 03:31:57PM **16** that they were -- they had the right to spend any of those  
 03:32:00PM **17** monies?  
 03:32:01PM **18 A.** Not in my tenure there, no.  
 03:32:03PM **19 Q.** And did you ever hear anybody suggest that the tribe could  
 03:32:07PM **20** spend such funds?  
 03:32:08PM **21 A.** No, I did not.  
 03:32:10PM **22** MR. STEMPLEWICZ: Objection, your Honor. It calls for  
 03:32:12PM **23** hearsay and really is irrelevant.  
 03:32:14PM **24** THE COURT: Sustained.  
 03:32:15PM **25** BY MR. HARPER:

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03:34:15PM **1** inaccurate?  
 03:34:15PM **2 A.** That's correct.  
 03:34:15PM **3 Q.** And did you see that as isolated problems with the systems  
 03:34:21PM **4** related to individual Indian monies or --  
 03:34:24PM **5 A.** No. At this point in time we had been trying to combine  
 03:34:28PM **6** all of the work that was being done at the information  
 03:34:31PM **7** management centers across the country into one operational IRMS  
 03:34:36PM **8** system, and what we discovered was IRMS was a different system  
 03:34:40PM **9** and each one of those management centers where it was being  
 03:34:43PM **10** operated because different programmers worked on it and  
 03:34:46PM **11** different areas and agencies used codes in different ways and  
 03:34:50PM **12** coded data in different manners and it was very difficult for us  
 03:34:53PM **13** to reconcile those differences on the programming side to make  
 03:34:57PM **14** one IRMS system out of six.  
 03:35:01PM **15 Q.** And you had mentioned earlier that there was at least at  
 03:35:04PM **16** some point a requirement to have a code sheet that you laid down  
 03:35:07PM **17** a series of numbers, and were there any problems that could  
 03:35:12PM **18** occur because of that?  
 03:35:13PM **19 A.** Well, yeah. I mean, you could have transposed data coming  
 03:35:18PM **20** from the hard copy record to the code sheet. You could have  
 03:35:21PM **21** made a human error. If you were the person who was checking the  
 03:35:27PM **22** in-coding you could have missed a coding that had been made, so  
 03:35:31PM **23** human error was possible in any one of those steps.  
 03:35:34PM **24 Q.** When you worked on the Tiger Team and when it says  
 03:35:37PM **25** inaccuracies, was that true for the integrated resource

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03:35:41PM **1** management system information?  
 03:35:42PM **2 A.** Yes, it was.  
 03:35:43PM **3 Q.** And then the third numbered three is Poor Internal Controls  
 03:35:51PM **4** and Inconsistent Practices Exist. Can you give me an example of  
 03:35:55PM **5** what that entails?  
 03:35:56PM **6 A.** Well, one of the problems that we faced was being able  
 03:35:59PM **7** to -- as a programmer you could alter code in the system and you  
 03:36:06PM **8** could put that code into what we call production where it could  
 03:36:09PM **9** be run by yourself or anyone else without any check or balances  
 03:36:15PM **10** being put in place, so you didn't have a separation of duties so  
 03:36:20PM **11** to speak. You could alter the code. You could put the code in  
 03:36:25PM **12** product and you could run the code without anybody ever knowing  
 03:36:27PM **13** that you were doing that.  
 03:37:03PM **14** MR. HARPER: Can I have a moment, your Honor?  
 03:37:05PM **15** THE COURT: You may.  
 03:37:06PM **16** (There was pause in the proceedings. )  
 03:37:34PM **17** BY MR. HARPER:  
 03:37:35PM **18 Q.** Ms. Infield, were you involved in any other -- you had  
 03:37:40PM **19** mentioned a couple of the other projects you were involved in.  
 03:37:43PM **20** Do you recall a project called BIA Data Clean-Up?  
 03:37:46PM **21 A.** Yes.  
 03:37:46PM **22 Q.** And what did that project entail?  
 03:37:49PM **23 A.** The first BIA data clean-up project that I worked on was  
 03:37:52PM **24** actually the information, I mean the individual Indian monies  
 03:37:57PM **25** accounts system or subsystem of IRMS, and what we did was we

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03:39:33PM **1** files and functions for realty and the title plants, which would  
 03:39:39PM **2** be Ellris and the lease and owner's subsystems of IRMS.  
 03:39:44PM **3 Q.** Have you heard the phrase "dirty data" used in this  
 03:39:49PM **4** project?  
 03:39:49PM **5 A.** Yes.  
 03:39:50PM **6 Q.** And what does that word mean to you?  
 03:39:52PM **7 A.** That means that you have data that's not consistent with  
 03:39:55PM **8** the paper documentation that was used in encoding the data in  
 03:39:58PM **9** the first place.  
 03:39:58PM **10 Q.** So you're presuming that the paper document is correct  
 03:40:00PM **11** then, would that information wouldn't necessarily be incorrect a  
 03:40:05PM **12** fair statement?  
 03:40:05PM **13 A.** Right.  
 03:40:09PM **14** MR. HARPER: Your Honor, we move Plaintiffs' Exhibit  
 03:40:12PM **15** 29, the high level implementation plan from 1998.  
 03:40:19PM **16** THE COURT: 29?  
 03:40:20PM **17** MR. HARPER: Yes, your Honor.  
 03:40:21PM **18** THE COURT: Received.  
 03:40:22PM **19** (Plaintiffs' Exhibit No. 29 received into evidence at  
 03:40:22PM **20** about 3:40 p.m.)  
 03:40:25PM **21** BY MR. HARPER:  
 03:40:25PM **22 Q.** If we can turn to page seventeen of that document. And  
 03:40:46PM **23** focusing on the bottom, do you see there that you were basically  
 03:40:53PM **24** one of the co-heads of that data clean-up project, right, Ms.  
 03:40:58PM **25** Infield?

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03:38:02PM **1** went, we went out and looked at the jacket files for an account  
 03:38:07PM **2** and tried to reconcile the data in the system against the paper  
 03:38:10PM **3** records in the jacket folder. Sometimes we got a hit, sometimes  
 03:38:14PM **4** we got a miss. Sometimes we didn't have the documentation to  
 03:38:18PM **5** prove that the data in the system was correct. Sometimes the  
 03:38:20PM **6** data in the system was not correct.  
 03:38:23PM **7 Q.** And how widespread were the -- was information that was  
 03:38:28PM **8** inaccurate or not correct in the information that you looked at  
 03:38:33PM **9** through the BIA data clean-up?  
 03:38:35PM **10 A.** I would have to say that we probably saw at least a twenty  
 03:38:38PM **11** percent error rate on every account among the accounts, some  
 03:38:43PM **12** piece of data or another, and mind you we only looked at the  
 03:38:48PM **13** personal data for that accountholder. We did not look at  
 03:38:50PM **14** transactions.  
 03:38:51PM **15 Q.** And what was your role or position with respect to BIA data  
 03:38:59PM **16** clean-up?  
 03:38:59PM **17 A.** I was in charge of the IIM data clean-up effort and we ran  
 03:39:04PM **18** the pilot project out of my shop. I wrote the statement of work  
 03:39:07PM **19** for the contractor to do the follow-on work to do the full IIM  
 03:39:10PM **20** data clean-up project. I did, however, leave OTFM before the  
 03:39:19PM **21** project was completed. The contractor was still doing work when  
 03:39:22PM **22** I went back to the data center from OTFM.  
 03:39:27PM **23 Q.** Did you have any involvement with data clean-up after that  
 03:39:29PM **24** point?  
 03:39:29PM **25 A.** Yes, I did. I began the data clean-up work on the realty

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03:40:58PM **1 A.** Yes, I was at that point in time.  
 03:41:01PM **2 Q.** Now, did the data clean-up subproject go to change  
 03:41:10PM **3** historical information or present information that was utilized  
 03:41:16PM **4** for transactions going forward?  
 03:41:18PM **5 A.** If an account was closed we did not do a data clean-up on  
 03:41:21PM **6** the system for that account, for our closed account. We didn't  
 03:41:24PM **7** look at transactions and we didn't go backwards in time other  
 03:41:28PM **8** than to make sure that whatever account was open now had the  
 03:41:32PM **9** current and accurate information in it as it was represented in  
 03:41:35PM **10** the hard copy records.  
 03:41:37PM **11 Q.** And when you said you didn't look at transactions, what  
 03:41:40PM **12** does that mean, what do you mean there?  
 03:41:42PM **13 A.** I didn't look at any of the IIM transactions that were made  
 03:41:45PM **14** against those accounts. They were not part of our clean-up  
 03:41:48PM **15** effort.  
 03:41:49PM **16 Q.** So you didn't do an accounting effort?  
 03:41:50PM **17 A.** We didn't go into an accounting effort, no. We were just  
 03:41:53PM **18** simply looking at the data about the accountholder: who owns  
 03:41:56PM **19** the name, date of birth, Social Security number, their tribal  
 03:42:01PM **20** affiliation, how their account was structured, what management  
 03:42:05PM **21** codes were used on the account based on the documentation in the  
 03:42:08PM **22** file?  
 03:42:08PM **23 Q.** And through this process there were a lot of modifications  
 03:42:11PM **24** then made to the information on IRMS?  
 03:42:14PM **25 A.** Yes, there were.

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03:42:15PM **1** Q. And sometimes information was changed. Would it be true  
 03:42:25PM **2** that information was changed to match the paper records?  
 03:42:28PM **3** A. Yes.  
 03:42:29PM **4** MR. STEMPLEWICZ: Objection; leading.  
 03:42:30PM **5** THE COURT: Sustained.  
 03:42:31PM **6** BY MR. HARPER:  
 03:42:41PM **7** Q. How was information changed?  
 03:42:44PM **8** A. What we did was we took the paper records and verified that  
 03:42:47PM **9** the information or the data in the system was correct. If the  
 03:42:50PM **10** system was incorrect based on a birth certificate for instance  
 03:42:53PM **11** that we found in the paper records then the date of birth would  
 03:42:57PM **12** be corrected in the system. The paper records were the ones  
 03:43:00PM **13** that we considered to be accurate.  
 03:43:04PM **14** Q. Were there ever occasions where there were names that were  
 03:43:08PM **15** in error?  
 03:43:09PM **16** A. Yes, there were, because sometimes you would have a  
 03:43:11PM **17** different name on the system than what you could even find in  
 03:43:14PM **18** the paper records because sometimes people were married or  
 03:43:19PM **19** divorced and last names changed and their name would be  
 03:43:21PM **20** different in the paper records than what was on the system, and  
 03:43:25PM **21** there were some of those even that we couldn't resolve at all  
 03:43:29PM **22** because we just didn't have the documentation to support the  
 03:43:33PM **23** current name in the system.  
 03:43:35PM **24** Q. How significant of a problem was the lack of documentation?  
 03:43:38PM **25** A. Well, there were missing documentation in a good number of

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03:46:03PM **1** center that now resides in Herndon, Virginia, so our alternate  
 03:46:10PM **2** site is Albuquerque, New Mexico. If something happened here we  
 03:46:14PM **3** would have to bring systems up in Albuquerque. In order to do  
 03:46:17PM **4** that we need to have the current documentation for that system.  
 03:46:21PM **5** We need to have the current run sheets and operational  
 03:46:24PM **6** procedures for those systems.  
 03:46:26PM **7** MR. STEMPLEWICZ: Objection. We've had a 59-day trial  
 03:46:30PM **8** in 2005 dealing with this very same issue and it's just not  
 03:46:34PM **9** relevant to the issues.  
 03:46:37PM **10** THE COURT: I'm having a little trouble with it  
 03:46:38PM **11** myself, but I'll let Mr. Harper continue.  
 03:46:42PM **12** MR. HARPER: Thank you, your Honor. I mean, I can  
 03:46:44PM **13** make a proffer on it.  
 03:46:45PM **14** THE COURT: I just don't know where it's all going. I  
 03:46:47PM **15** mean, the Plaintiffs' case so far is you can't trust anything  
 03:46:50PM **16** the government is going to put in. That's basically what your  
 03:46:52PM **17** case is.  
 03:46:53PM **18** MR. HARPER: Well, your Honor, we do believe that it  
 03:46:55PM **19** is a relevant consideration that the information on IRMS in  
 03:47:02PM **20** particular is in our estimation, based on the evidence that Ms.  
 03:47:07PM **21** Infield and others will be providing, is unreliable.  
 03:47:11PM **22** THE COURT: I know, but where does that take us? We  
 03:47:13PM **23** need a number at the end of this case. How are we going to get  
 03:47:17PM **24** it? Are you going to ask me to add the twenty percent that she  
 03:47:20PM **25** thinks it was off?

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03:43:43PM **1** the files that we looked at. And it was important enough that  
 03:43:47PM **2** there was a missing document or a document retrieval subproject  
 03:43:51PM **3** that had been started later on in the trust reform effort.  
 03:43:54PM **4** Q. Based on your Tiger Team report experience and your  
 03:44:11PM **5** experience with the high-level implementation plan data clean-up  
 03:44:16PM **6** subproject, would you say in general that the information that  
 03:44:21PM **7** is reasonable to rely on is the information disbursement  
 03:44:24PM **8** information in particular on the integrated resource management  
 03:44:27PM **9** system?  
 03:44:28PM **10** A. They didn't look at the disbursement information in my  
 03:44:31PM **11** effort, but given what I know about the nonsegregation of duties  
 03:44:35PM **12** I wouldn't call the data in the system reliable at all.  
 03:44:42PM **13** Q. Ms. Infield, you talked a little bit about your experience  
 03:45:10PM **14** with the various computer systems at the department and I want  
 03:45:13PM **15** to talk a little bit about that and the trustworthiness of those  
 03:45:18PM **16** systems. Do you have experience with whether and to what extent  
 03:45:30PM **17** those systems have been documented and determined to be  
 03:45:34PM **18** trustworthy?  
 03:45:34PM **19** A. If we're talking about the trust systems in general, I do  
 03:45:39PM **20** have 26 years of experience working mostly with the trust  
 03:45:42PM **21** systems. I did some administrative system work over the years  
 03:45:46PM **22** but most of it was trust, and in my current position I am the  
 03:45:50PM **23** director of the division of disaster recovery, so one of the  
 03:45:54PM **24** things that we have to do is make sure that we can reconstitute  
 03:45:58PM **25** and operate a system should something happen to the major data

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03:47:21PM **1** MR. HARPER: No, your Honor. What we're attempting to  
 03:47:22PM **2** demonstrate, if I may, is that we are making what we believe is  
 03:47:28PM **3** a reasonable approximation. The government's counter, as we  
 03:47:33PM **4** understand it, is that disbursement information that they intend  
 03:47:37PM **5** to bring up counters that, and that there were --  
 03:47:41PM **6** THE COURT: I'm going to hear a number from you at  
 03:47:43PM **7** some point in this trial?  
 03:47:45PM **8** MR. HARPER: Yes. We hope to provide you a series of  
 03:47:47PM **9** numbers that we hope will satisfy your Honor.  
 03:47:49PM **10** THE COURT: That's a reasonable approximation?  
 03:47:51PM **11** MR. HARPER: We believe both to the number and to my  
 03:47:56PM **12** --  
 03:47:58PM **13** THE COURT: This from the people who thought that  
 03:47:58PM **14** statistical accounting was an absolute no-no, but you're going  
 03:48:01PM **15** to give me a reasonable approximation?  
 03:48:04PM **16** MR. HARPER: Well, if I may take that on for a minute,  
 03:48:08PM **17** your Honor, because I do believe that the burdens are different  
 03:48:11PM **18** between the beneficiary and the trustee as we saw and have  
 03:48:14PM **19** repeatedly cited to your Honor. It is axiomatic that all  
 03:48:19PM **20** inferences are against the trustee and for the beneficiary where  
 03:48:22PM **21** there are uncertainties, and so our burden to establish a  
 03:48:26PM **22** reasonable approximation is certainly not equivalent to the  
 03:48:29PM **23** government's burden of establishing these balances with specific  
 03:48:34PM **24** evidence of those disbursements, and so we think because the  
 03:48:38PM **25** burdens are different ones would establish the prima fascia

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03:48:41PM **1** indication of reasonable approximation. It is then on the  
03:48:43PM **2** government to establish why with specific evidence why that is  
03:48:48PM **3** not so.  
03:48:49PM **4** THE COURT: All right.  
03:48:50PM **5** MR. HARPER: Your Honor --  
03:48:50PM **6** THE COURT: Ms. Infield came all the way up here from  
03:48:55PM **7** Albuquerque to testify. I'm going to let her finish testifying,  
03:48:57PM **8** but let's make it as clear as we can, Mr. Harper, because  
03:49:00PM **9** frankly the thrust of what she has to say she has said twice  
03:49:04PM **10** before.  
03:49:04PM **11** MR. HARPER: Your Honor, I think the material in Osage  
03:49:12PM **12** we think was different and went to one of the issues that your  
03:49:17PM **13** Honor put in his order and I'm hoping to get into some  
03:49:20PM **14** information that I hope would be helpful to the Court.  
03:49:23PM **15** THE COURT: All right. Let's go. Thank you.  
03:49:24PM **16** BY MR. HARPER:  
03:49:25PM **17** **Q.** Ms. Infield, if I can bring up Plaintiffs' Exhibit 22. Ms.  
03:49:39PM **18** Infield, this is part -- I'm sorry. 23. Do you recognize this  
03:49:52PM **19** part of the code of federal regulations?  
03:49:54PM **20** **A.** This appears to be 36 CFR part 1234 dealing with electronic  
03:50:02PM **21** recordkeeping.  
03:50:03PM **22** **Q.** And are you familiar with this regulation?  
03:50:08PM **23** **A.** Yes, I am. There are certain requirements that the  
03:50:10PM **24** government has to meet in order to preserve and protect records,  
03:50:16PM **25** federal records, and in --

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03:51:42PM **1** **Q.** I'd like to bring up Plaintiffs' Exhibit 24. Ms. Infield,  
03:51:54PM **2** as you can see, this is an e-mail from Yolanda -- a person named  
03:52:01PM **3** Yolanda Montoya on November 16, 2006, to you. Do you recognize  
03:52:06PM **4** this document?  
03:52:06PM **5** **A.** Yes.  
03:52:07PM **6** **Q.** And could you tell the Court what this document is?  
03:52:09PM **7** **A.** Well, it's an e-mail from Yolanda Montoya, who works for  
03:52:14PM **8** the Office of Trust Records, sending me a copy of a spreadsheet  
03:52:18PM **9** that identifies all of our systems that have an approved record  
03:52:22PM **10** schedule by NARA, the schedules that are being drafted and then  
03:52:25PM **11** the schedules that need to be drafted yet, so we have a whole  
03:52:28PM **12** list of our systems and where they are at in the record schedule  
03:52:32PM **13** process.  
03:52:33PM **14** **Q.** If we can bring up Plaintiffs' Exhibit 25. And is this the  
03:52:43PM **15** schedule that you're talking about?  
03:52:45PM **16** **A.** Yes. That's the spreadsheet that was attached to that  
03:52:48PM **17** e-mail showing me which record schedules for which systems have  
03:52:54PM **18** been drafted, developed, and approved by NARA and ready for  
03:52:59PM **19** implementation.  
03:53:00PM **20** **Q.** Now, have these actually been implemented?  
03:53:03PM **21** **A.** No, they have not been implemented at this time.  
03:53:05PM **22** **Q.** So the process required under the regulations has not come  
03:53:09PM **23** to completion?  
03:53:10PM **24** **A.** Has not been completed, that's correct.  
03:53:12PM **25** **Q.** I mean, as of today had they been completed?

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03:50:19PM **1** MR. STEMPLEWICZ: Objection; legal opinion being  
03:50:21PM **2** rendered here be the witness. The regulation speaks for itself.  
03:50:25PM **3** MR. HARPER: She's just testifying --  
03:50:28PM **4** THE COURT: I'll allow it.  
03:50:29PM **5** MR. HARPER: -- as to her understanding.  
03:50:30PM **6** THE COURT: Overruled.  
03:50:32PM **7** THE WITNESS: And actually, in my job description I am  
03:50:34PM **8** required to understand these regulations and apply them  
03:50:37PM **9** accordingly to my operation, so one of the things that we're  
03:50:43PM **10** required to do is protect and preserve records based on a  
03:50:47PM **11** federal -- on an approved federal records schedule, electronic  
03:50:52PM **12** records schedule, for any system. And that's what these, that's  
03:50:56PM **13** what this particular chapter of the CFR is about, is how to use  
03:51:01PM **14** those electronic records and how to safeguard them and what they  
03:51:06PM **15** can be used for.  
03:51:07PM **16** BY MR. HARPER:  
03:51:07PM **17** **Q.** And as you mentioned, one of the requirements is that you  
03:51:11PM **18** document the NARA process?  
03:51:17PM **19** **A.** Yes.  
03:51:17PM **20** **Q.** And has that been done?  
03:51:20PM **21** **A.** Yes. In portions it has for some of the trust systems,  
03:51:25PM **22** yes. Electronic record schedules have been created by the  
03:51:29PM **23** Office of Trust Records and they had been approved by NARA and  
03:51:37PM **24** they have been submitted to the Bureau of Indian Affairs for  
03:51:40PM **25** implementation back in 2004, I believe.

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03:53:15PM **1** **A.** No, they have not.  
03:53:16PM **2** **Q.** And so as you sit here today, I mean, do you know whether  
03:53:29PM **3** or not the process by which trustworthiness of the systems has  
03:53:37PM **4** been determined has been fully implemented today?  
03:53:41PM **5** **A.** No, it has not. The record schedules have not been  
03:53:44PM **6** implemented, and one of the problems that I see with that is  
03:53:48PM **7** that the record schedules as they have been approved by NARA  
03:53:53PM **8** require us to keep for permanent retention all trust records and  
03:53:56PM **9** all of the IRMS modules and any trust system. That's how the  
03:54:00PM **10** schedules were drafted and approved by NARA, and since they have  
03:54:04PM **11** not been implemented to this day we are still destroying trust  
03:54:08PM **12** records on a daily basis because the schedules, we're not  
03:54:13PM **13** preserving them as we're required to by the schedules.  
03:54:15PM **14** **Q.** These are the electronic records that are being destroyed?  
03:54:18PM **15** **A.** That's correct.  
03:54:21PM **16** MR. HARPER: Can I have a moment, your Honor?  
03:54:25PM **17** (There was a pause in the proceedings.)  
03:54:32PM **18** MR. HARPER: Thank you, Ms. Infield. I think counsel  
03:54:33PM **19** for the government will have a few questions.  
03:54:35PM **20** Thank you, your Honor.  
03:54:37PM **21** THE COURT: Thank you.  
03:54:38PM **22** CROSS-EXAMINATION  
03:54:38PM **23** BY MR. STEMPLEWICZ:  
03:54:47PM **24** **Q.** Good afternoon.  
03:54:47PM **25** **A.** Good afternoon.

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03:54:48PM **1** THE COURT: I think it goes without saying, counsel,  
 03:54:50PM **2** but it is not necessary to engage in lengthy cross-examination  
 03:54:54PM **3** of that which you claim is irrelevant.  
 03:54:57PM **4** MR. STEMPLEWICZ: Well, if it had been admitted, your  
 03:55:00PM **5** Honor, I have to deal with it, I suppose.  
 03:55:03PM **6** BY MR. STEMPLEWICZ:  
 03:55:04PM **7** **Q.** In terms of this 20 percent error rate --  
 03:55:07PM **8** THE COURT: Hint, hint.  
 03:55:09PM **9** MR. STEMPLEWICZ: Yes, your Honor.  
 03:55:11PM **10** THE COURT: Go ahead.  
 03:55:12PM **11** BY MR. STEMPLEWICZ:  
 03:55:12PM **12** **Q.** I do have a few questions just for clarification, Ms.  
 03:55:16PM **13** Infield. In terms of the 20 percent error rate you talked about  
 03:55:20PM **14** in the data clean-up, you mentioned that some of these errors  
 03:55:24PM **15** were date of birth, names were wrong because marriages had taken  
 03:55:30PM **16** place, divorces and that sort of thing. Were those the majority  
 03:55:33PM **17** of errors or do you have any kind of a breakdown or what those  
 03:55:37PM **18** errors are?  
 03:55:38PM **19** **A.** I don't have a breakdown of what each category of the  
 03:55:41PM **20** errors were, no.  
 03:55:42PM **21** **Q.** Were any of them financial errors?  
 03:55:45PM **22** **A.** We did not look at the financial transactions.  
 03:55:47PM **23** **Q.** Okay. Now, you testified in October about what you said  
 03:56:00PM **24** today. You referred I think to your work with OST and Mr.  
 03:56:05PM **25** Homan?

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03:57:42PM **1** **Q.** And with associations?  
 03:57:45PM **2** **A.** Yes.  
 03:57:45PM **3** **Q.** Do you remember which associations?  
 03:57:45PM **4** **A.** The Navajo Shivakay (ph) Association, and the Anadarko.  
 03:57:50PM **5** There is an oil and gas allottee association out of Anadarko and  
 03:57:56PM **6** we had members from each one of those associations were part of  
 03:57:59PM **7** that federal tribal task force.  
 03:58:02PM **8** **Q.** Were there any from any other parts of the country as well?  
 03:58:04PM **9** **A.** Not that I can recall.  
 03:58:06PM **10** **Q.** What do these associations to your understanding do for  
 03:58:09PM **11** their members?  
 03:58:09PM **12** **A.** Well, they tend to have a common goal in that they try to  
 03:58:14PM **13** keep track of what is produced on their property as far as oil  
 03:58:19PM **14** and gas is concerned and try to follow the collection of that  
 03:58:22PM **15** money and make -- they're trying to make sure that they actually  
 03:58:26PM **16** receive their money.  
 03:58:27PM **17** **Q.** And there have been some lawsuits where the associations  
 03:58:30PM **18** have sued the United States?  
 03:58:31PM **19** **A.** Yes.  
 03:58:31PM **20** **Q.** Do you know of anywhere they've sued third parties like oil  
 03:58:35PM **21** refineries and that sort of thing?  
 03:58:36PM **22** **A.** I'm not sure about that.  
 03:58:38PM **23** MR. STEMPLEWICZ: No further questions, your Honor.  
 03:58:39PM **24** THE COURT: Thank you. There's nothing further for  
 03:58:45PM **25** Ms. Infield.

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03:56:05PM **1** **A.** Um-hmm.  
 03:56:06PM **2** **Q.** And I recall you saying something back then about meetings  
 03:56:11PM **3** that you had with allottees and allottees associations and  
 03:56:17PM **4** feedback that this project was trying to obtain from the  
 03:56:23PM **5** individual Indians and tribes, and I think you noted that the  
 03:56:27PM **6** biggest concern for all the allottees that I heard all over the  
 03:56:32PM **7** country was I don't know what's in my account. When I get a  
 03:56:37PM **8** check in the mail I don't know what that money is from. Do you  
 03:56:41PM **9** recall saying that?  
 03:56:42PM **10** **A.** Yes.  
 03:56:43PM **11** **Q.** Have you had an opportunity since then to get any feedback  
 03:56:50PM **12** from any individuals who have IIM accounts about their concerns  
 03:56:57PM **13** that as a result of what's transpiring in this hearing they  
 03:57:01PM **14** still don't get an accounting that when they may end up with is  
 03:57:06PM **15** a check, have you talked to anybody about that?  
 03:57:08PM **16** **A.** I'm sorry. I'm not understanding your question.  
 03:57:11PM **17** **Q.** Have you done any sort of follow-up with any IIM account-  
 03:57:15PM **18** holders about what their continuing concerns are about finding  
 03:57:22PM **19** out what's in their accounts?  
 03:57:25PM **20** **A.** No. I don't currently have face-to-face conversations with  
 03:57:28PM **21** the accountholders because I'm not in that position anymore and  
 03:57:33PM **22** in the data center I don't have direct contact with the account-  
 03:57:36PM **23** holders now.  
 03:57:40PM **24** **Q.** But you did at one time?  
 03:57:40PM **25** **A.** Yes.

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03:58:46PM **1** Thank you, ma'am. You're excused. You may step down.  
 03:58:49PM **2** (Witness excused at about the 3:59 p.m.)  
 04:00:25PM **3** MR. LEVITAS: Plaintiffs call Dr. James Miller.  
 04:00:25PM **4** MR. KIRSCHMAN: Your Honor, I'm going to object to  
 04:00:27PM **5** this. I believe they're out of order.  
 04:00:29PM **6** THE COURT: Out of order?  
 04:00:30PM **7** MR. KIRSCHMAN: As far as no witness order. We were  
 04:00:33PM **8** told that there would be three witnesses today and three  
 04:00:35PM **9** tomorrow and that the fourth would be Joan Tyler.  
 04:00:38PM **10** THE COURT: Well, this is just what happens when you  
 04:00:40PM **11** try cases in my court. Things move faster than you think  
 04:00:43PM **12** they're going to.  
 04:00:44PM **13** MR. KIRSCHMAN: I'm not objecting to the speed. I'm  
 04:00:46PM **14** objecting to the fact that they now have Mr. Miller testifying  
 04:00:49PM **15** instead of Joan Tyler, who we were prepared to deal with as a  
 04:00:54PM **16** fourth witness.  
 04:00:54PM **17** THE COURT: Well, if you don't think you can  
 04:00:56PM **18** meaningfully cross-examine him we'll adjourn until tomorrow when  
 04:01:00PM **19** he's finished with his direct.  
 04:01:01PM **20** You may take the stand, Dr. Miller.  
 04:01:08PM **21** COURTROOM DEPUTY: Do you solemnly swear that the  
 04:01:10PM **22** testimony you should give to the Court in this case now on trial  
 04:01:14PM **23** will be the truth, the whole truth and nothing but the truth so  
 04:01:17PM **24** help you God?  
 04:01:17PM **25** DR. MILLER: Yes indeed.

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04:01:20PM **1** COURTROOM DEPUTY: Thank you. Please be seated.

04:01:22PM **2** MR. LEVITAS: Your Honor, if I may, I will identify

04:01:24PM **3** Dr. Miller and give a brief summary of what I expect him to

04:01:28PM **4** testify to.

04:01:29PM **5** THE COURT: Thank you.

04:01:33PM **6** MR. LEVITAS: Dr. James C. Miller is an economist by

04:01:36PM **7** training and professional practice who has had vast experience

04:01:42PM **8** in our government. He will testify about why and how the United

04:01:50PM **9** States government benefits from holding IIM funds, and he will

04:01:57PM **10** also testify about the use of restitution as an effective remedy

04:02:07PM **11** to deter misconduct as well as to discourage improper profits,

04:02:17PM **12** and after he is sworn I'll give a little bit of background of

04:02:24PM **13** his professional educational and other experience.

04:02:28PM **14** THE COURT: Has the witness not been sworn, Tina?

04:02:31PM **15** COURTROOM DEPUTY: No, he's been sworn.

04:02:33PM **16** THE COURT: He has been sworn.

04:02:35PM **17** Proceed.

04:02:36PM **18** MR. LEVITAS: Okay. Dr. Miller was educated and has

04:02:48PM **19** two degrees, three degrees, and is a practicing economist. He

04:03:00PM **20** has taught at two universities and has served in the government

04:03:13PM **21** in various capacities. He served in the Council and Wage and

04:03:22PM **22** Price Stability. He was a chairman of the Federal Trade

04:03:30PM **23** Commission, and he was director of the Office of Management and

04:03:35PM **24** Budget. And he has authored I think it's nine books and over a

04:03:45PM **25** hundred articles variously dealing with economic matters, the

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04:05:45PM **1** OMB also evaluates various programs that agencies have, tries to

04:05:52PM **2** establish priorities. That's all in the budget side. On the

04:05:55PM **3** management side, OMB tries to increase the effectiveness and

04:05:58PM **4** efficiency of government agencies. It also works with treasury

04:06:03PM **5** and financial management. It has an office of procurement

04:06:09PM **6** policy to make sure that the procurement policy is effectual and

04:06:15PM **7** efficient. It also has a regulatory function and information

04:06:18PM **8** function, and those are to make sure that the regulatory

04:06:21PM **9** activities of the agencies are consistent with law, but also

04:06:24PM **10** consistent with benefit costs analysis and the President's

04:06:28PM **11** programs.

04:06:29PM **12** **Q.** In connection with the budget function, does the Office of

04:06:34PM **13** Management and Budget address the budget of the entire

04:06:39PM **14** government or some portion thereof?

04:06:41PM **15** **A.** Well, it addresses the budget of the entire government and

04:06:45PM **16** in that regard it has to work with treasury and special counsel

04:06:49PM **17** of economic advisors as well too, and in fact, there's a name

04:06:55PM **18** coined for it. It's called the troika. Those three agency

04:06:59PM **19** heads and their staffs meet and discuss and forecast the outlays

04:07:06PM **20** of the federal government, the income of the federal government,

04:07:09PM **21** and the borrowing needs, if any, of the federal government.

04:07:13PM **22** **Q.** And how frequently does this troika meet?

04:07:17PM **23** **A.** Well, it meets, especially budget times it meets very

04:07:22PM **24** frequently. When I was budget director the secretary of

04:07:26PM **25** treasury and the chairman of the counsel of economic advisors

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04:03:51PM **1** budget, and other matters relating to government. Dr. Miller

04:03:59PM **2** has expertise in the overall functioning of the government and

04:04:07PM **3** the budget and how the government may benefit from holding IIM

04:04:20PM **4** funds in the treasury.

04:04:26PM **5** If I may begin to ask Dr. Miller some questions I

04:04:31PM **6** think I will be able to bring out the points that I expect him

04:04:35PM **7** to testify to, and while we had noted his testimony as being

04:04:43PM **8** four hours, my guess is that we will be able to complete his

04:04:46PM **9** testimony in an hour.

04:04:51PM **10** THE COURT: I'm sure Dr. Miller will be happy to hear

04:04:53PM **11** that.

04:04:55PM **12** MR. LEVITAS: I think others will too as well, your

04:04:55PM **13** Honor.

04:04:55PM **14** DR. JAMES C. MILLER, WITNESS FOR THE PLAINTIFFS, SWORN

04:04:55PM **15** DIRECT EXAMINATION

04:05:02PM **16** BY MR. LEVITAS:

04:05:02PM **17** **Q.** If I may, Dr. Miller, would you describe the role and

04:05:10PM **18** function of OMB, Office of Management and Budget, in our

04:05:15PM **19** government?

04:05:15PM **20** **A.** OMB basically takes the President's priorities and policies

04:05:21PM **21** and translates those into a budget and puts it all together and

04:05:27PM **22** works with the agencies putting it all together for the

04:05:30PM **23** President to propose to Congress. Congress responds. The OMB

04:05:36PM **24** then makes sure that the agencies administer the budget

04:05:40PM **25** consistent with the legislation and the President's policies.

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04:07:29PM **1** and I had practically weekly breakfast.

04:07:32PM **2** **Q.** And in those meetings one of the subjects that you

04:07:37PM **3** addressed was the borrowing needs of the government in order to

04:07:44PM **4** address whatever current or long-term requirements had to be

04:07:49PM **5** met; is that correct?

04:07:49PM **6** **A.** Yes.

04:07:53PM **7** **Q.** In connection with your work with the treasury, what

04:07:59PM **8** particular units within the treasury were addressing matters

04:08:05PM **9** relating to borrowing needs?

04:08:09PM **10** **A.** Well, it was the Bureau of the Federal Debt and also the

04:08:19PM **11** financial management service, those were the two principal ones

04:08:25PM **12** dealing with borrowing and dealing with the debt. Of course we

04:08:28PM **13** dealt with the treasury on other parts of treasury as well. IRS

04:08:33PM **14** of course raises the money or collects the money, taxpayers'

04:08:36PM **15** money, and how efficient they were doing that, but basically in

04:08:40PM **16** looking at what to do about the deficit or borrowing to meet the

04:08:45PM **17** needs of the government we were dealing with F&S and also the

04:08:50PM **18** Bureau of the Debt.

04:08:51PM **19** **Q.** Dr. Miller, in preparation for your testimony today what

04:08:56PM **20** documents or reports or other materials did you read and study

04:09:03PM **21** in order to be prepare for this testimony?

04:09:06PM **22** **A.** Well, the first thing I did was to read your opinion, your

04:09:10PM **23** Honor, of January 30th.

04:09:12PM **24** THE COURT: How much are they paying you an hour?

04:09:17PM **25** Don't answer that.

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04:09:16PM **1** THE WITNESS: I also read the wikipedia entry about  
 04:09:22PM **2** this case that you've cited. I haven't read Bleakhouse yet but  
 04:09:28PM **3** I'm planning to do that. And I read --  
 04:09:31PM **4** THE COURT: Do it on their nickel.  
 04:09:33PM **5** THE WITNESS: That's a thought.  
 04:09:34PM **6** THE COURT: That's a thought?  
 04:09:35PM **7** THE WITNESS: Your Honor, then I read the Plaintiffs'  
 04:09:40PM **8** memorandum in praying for restitution, and I read the  
 04:09:47PM **9** department's response -- excuse me -- reply, and then I read the  
 04:09:53PM **10** Plaintiffs' response. I read Mr. Richard Greg's transcript of  
 04:10:00PM **11** his appearance before the Court in 1999, I read a number of  
 04:10:09PM **12** reports by GAO by inspector general of the treasury. There was  
 04:10:15PM **13** a couple of reports that I think that I understand that the  
 04:10:19PM **14** defendants had offered in previous iterations of this case. I  
 04:10:25PM **15** did some Googling and research on the Internet myself. I read  
 04:10:32PM **16** portions of I think what were attached to Defendant's reply,  
 04:10:39PM **17** response, excuse me, response from OMB circular A-11, and I said  
 04:10:47PM **18** I'd like to see the whole thing, and of course then it arrived  
 04:10:51PM **19** and I forgot it was about a thousand pages long. I just read  
 04:10:54PM **20** relevant portions of it, but that's among the major documents  
 04:11:00PM **21** that I read or reviewed in this case.  
 04:11:04PM **22** Q. Now, you made specific reference to Richard Greg. Who was  
 04:11:08PM **23** Richard Greg?  
 04:11:09PM **24** A. He was commissioner of the FMS, Financial Management  
 04:11:13PM **25** Service, back in 1999 when he did his testimony.

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04:12:49PM **1** about the benefit to the government from the --  
 04:12:55PM **2** A. Could I just amplify a little bit, what I mean going in the  
 04:12:58PM **3** treasury?  
 04:13:00PM **4** Q. Please, Dr. Miller.  
 04:13:01PM **5** A. When you think about it's very much like I have in mind the  
 04:13:05PM **6** old Rigs National Bank which is now PNC across from treasury.  
 04:13:09PM **7** You go up there and you got these tellers and when you deposit  
 04:13:14PM **8** money it all goes in the back, right, but they don't put a  
 04:13:18PM **9** little note sticky on it saying this, you know, today was from  
 04:13:22PM **10** Jim Miller and this today was from Harry Smith or Lucille Jones.  
 04:13:27PM **11** It's all commingled together, that's what I mean. I mean, I  
 04:13:31PM **12** still have an account and for the bank it's got a liability and  
 04:13:36PM **13** asset. Their money from me is in the bank but it's a liability  
 04:13:40PM **14** because they owe it back to me, so that's what I mean by the  
 04:13:43PM **15** money is being all commingled. That's basically the way it  
 04:13:46PM **16** works in the federal government.  
 04:13:47PM **17** Q. Now, with reference to this general treasury account, if  
 04:13:54PM **18** the United States government holds funds say of IIM trust in  
 04:14:02PM **19** that account which otherwise should have been distributed, how,  
 04:14:09PM **20** if it does in any way, benefit the federal government?  
 04:14:12PM **21** A. It benefits the federal government because the federal  
 04:14:15PM **22** government does not need then to borrow the funds that they have  
 04:14:20PM **23** there. They don't have to pay the interest on the funds that  
 04:14:24PM **24** they borrowed, and that carries over from year to year.  
 04:14:28PM **25** Q. Is this a significant benefit to the government?

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04:11:17PM **1** Q. And you've identified that as one of the key agencies in  
 04:11:22PM **2** the treasury department addressing the amount of borrowing  
 04:11:25PM **3** needed by the government?  
 04:11:26PM **4** A. Yes, sir.  
 04:11:28PM **5** Q. Are you aware of the IIM trust?  
 04:11:33PM **6** A. Yes.  
 04:11:37PM **7** Q. And could you -- do you know when the government collects  
 04:11:45PM **8** funds for the IIM trust where are those funds deposited?  
 04:11:51PM **9** A. Well, those funds eventually go into the treasury  
 04:11:56PM **10** general fund. I mean, they are general funds. It's like it's  
 04:12:03PM **11** ubiquitous. It's all the funds commingled together, and that's  
 04:12:06PM **12** where those funds eventually wind up.  
 04:12:08PM **13** Q. You said commingled, so by that you mean other funds that  
 04:12:13PM **14** come into the government are also in that the treasury general  
 04:12:22PM **15** account?  
 04:12:22PM **16** MR. STEMPLEWICZ: Your Honor, I'll object at this  
 04:12:22PM **17** point. I think it's going beyond the general introduction of  
 04:12:24PM **18** Mr. Miller, and I'm not sure where we are on his status as an  
 04:12:28PM **19** expert or how he's being qualified.  
 04:12:30PM **20** THE COURT: If the former head of OMB and the Federal  
 04:12:33PM **21** Trade Commission can't tell us how money is handled in the  
 04:12:36PM **22** treasury I don't know who can. I'm going to allow it.  
 04:12:39PM **23** Overruled.  
 04:12:41PM **24** BY MR. LEVITAS:  
 04:12:41PM **25** Q. That then leads me directly to my next question: That

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04:14:32PM **1** A. Yes. I mean, from the analysis prepared by CRA that will  
 04:14:39PM **2** be sponsored by others the numbers are quite significant.  
 04:14:43PM **3** Q. And that is a financial value to the United States?  
 04:14:49PM **4** A. Absolutely.  
 04:14:50PM **5** Q. How does that benefit come about? You referred to the fact  
 04:14:54PM **6** that the government doesn't have to borrow as much money. Is  
 04:15:00PM **7** that one of the factors that this troika or the FMS take into  
 04:15:06PM **8** account in making borrowing decisions?  
 04:15:09PM **9** A. Well, the troika would be looking at how much the federal  
 04:15:15PM **10** government would need for transaction purposes, and one of the  
 04:15:19PM **11** reports, I think GAO reports, describe it very accurately. I  
 04:15:27PM **12** mean, there are inflows and outflows, but you need to keep sort  
 04:15:31PM **13** of a stable balance, and if you add a little bit of money so  
 04:15:35PM **14** that you weren't spending, it's a way of saying then you don't  
 04:15:38PM **15** have to borrow as much.  
 04:15:40PM **16** Q. Would you explain a little bit more about this level that  
 04:15:44PM **17** has to be maintained or that they seek to maintain?  
 04:15:46PM **18** A. Right. Well, the federal government is always issuing  
 04:15:50PM **19** checks and sometimes it issues a lot more checks than other  
 04:15:54PM **20** times. Also, it's receiving revenue coming in to the treasury  
 04:15:58PM **21** general fund, and you know when there are payments from  
 04:16:01PM **22** businesses for quarterly payments or a monthly or weekly  
 04:16:05PM **23** payments or bi-weekly payments that you get these spikes,  
 04:16:08PM **24** sometimes the government takes the money from the spikes and  
 04:16:11PM **25** puts them in overnight accounts and earns interest on them, but

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04:16:14PM **1** what we're looking at is the longer term that is the deficit

04:16:19PM **2** that you have to -- in most of our history we've had a deficit,

04:16:25PM **3** but even when we run a surplus you have to role over the debt so

04:16:30PM **4** you have to issue new debt, and if you have this extra amount of

04:16:34PM **5** money, that's money that you don't have to borrow and so that is

04:16:38PM **6** a benefit to the government, and also the interest that you

04:16:41PM **7** don't have to pay on money that you're obviously not borrowing.

04:16:44PM **8 Q.** That was the other aspect that I wanted to inquire about.

04:16:48PM **9** The impact of having these funds reduces the interest being paid

04:16:55PM **10** by the federal government for borrowing?

04:16:57PM **11 A.** Yes.

04:16:58PM **12 Q.** Now, you identified that as a significant benefit to the

04:17:04PM **13** government. Is there any way to quantify that benefit?

04:17:08PM **14 A.** Yes, yes. And the methodology is rather straightforward

04:17:12PM **15** and it's the methodology from all that I've understood about the

04:17:17PM **16** analyses prepared by CRA. They have followed that methodology.

04:17:22PM **17 Q.** CRA is the expert witness that the plaintiffs intend to

04:17:27PM **18** call later to discuss your testimony about how you can quantify?

04:17:34PM **19 A.** That's correct.

04:17:36PM **20 Q.** Please proceed.

04:17:37PM **21 A.** Well, you basically take the amount of money that you don't

04:17:40PM **22** have to borrow and you take the interest on the money that you

04:17:45PM **23** would have had to pay and then for the following year you have

04:17:51PM **24** the same amount of money that you don't have to borrow and you

04:17:57PM **25** have the interest on that money that you don't have to borrow,

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04:20:18PM **1** attention when it comes up, to lines 4 through 24. First of

04:20:34PM **2** all, let me ask you if you disagree with the analysis or the

04:20:37PM **3** statements made by Commissioner Greg.

04:20:40PM **4 A.** No, I don't disagree. In fact, that's just basically what

04:20:44PM **5** I was saying about you put money in an account that goes into

04:20:47PM **6** the general account and that belongs -- it's an asset just like

04:20:52PM **7** my money becomes an asset of the bank. This money becomes an

04:20:56PM **8** asset of the federal government's.

04:20:57PM **9 Q.** When you said the federal government, you mean the United

04:21:00PM **10** States of America?

04:21:00PM **11 A.** United States of America.

04:21:02PM **12 Q.** And that United States of America is, based on what you

04:21:08PM **13** have read, is that the trustee of the IIM trust that you've

04:21:13PM **14** talked about?

04:21:13PM **15 A.** Well, I think you're asking me for a legal opinion. I

04:21:18PM **16** wouldn't proffer that.

04:21:21PM **17 Q.** Well, I wouldn't dare ask you for a legal opinion, Dr.

04:21:25PM **18** Miller.

04:21:26PM **19** Now, so you as former director of OMB, former chairman

04:21:38PM **20** of the FTC, experienced in government, and Commissioner Greg who

04:21:44PM **21** was head of the FMS that makes the borrowing decisions, concur

04:21:51PM **22** that when funds are left in the treasury general account, IIM

04:21:59PM **23** funds which otherwise would be distributed, there is a

04:22:02PM **24** significant and quantifiable benefit to the United States?

04:22:06PM **25 A.** Yes.

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04:18:01PM **1** which includes not only the basic principal plus the interest

04:18:05PM **2** you would have paid the previous year and you add that up for

04:18:09PM **3** each subsequent year and that comes to a rather sizeable figure

04:18:14PM **4** and so you can prepare a table for each and every year that you

04:18:20PM **5** have positive balances that are in the treasury general fund.

04:18:28PM **6 Q.** Let me turn now to Commissioner Greg's testimony which you

04:18:34PM **7** said you have read. Do you recognize that as the testimony that

04:18:47PM **8** you referred to from Commissioner Greg that you read?

04:18:50PM **9 A.** Yes, sir.

04:18:51PM **10 Q.** All right. I want to show you several portions of that

04:18:57PM **11** testimony and an ask you some questions about them. The first

04:19:02PM **12** is on page 3,315 of the transcript, and I'll direct your

04:19:10PM **13** attention to lines 10 through 19. And could you tell the Court,

04:19:23PM **14** tell the judge, what the significance of Commissioner Greg's

04:19:27PM **15** testimony is that you're reading?

04:19:30PM **16 A.** Well, that means he's basically saying here just what I

04:19:34PM **17** said, that is, if there are monies in the account that should

04:19:38PM **18** have otherwise been disbursed, it's a benefit to the federal

04:19:42PM **19** government because the federal government doesn't have to borrow

04:19:44PM **20** that money.

04:19:44PM **21 Q.** And is there anything in Commissioner Greg's testimony that

04:19:55PM **22** you have looked at both before you or any other portion of his

04:20:00PM **23** testimony with which you disagree?

04:20:02PM **24 A.** No. Not on substance, no.

04:20:04PM **25 Q.** Now, if you would display page 3,396, and I'll direct your

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04:22:08PM **1 Q.** Now, Commissioner Greg testified in 1999, and let me try to

04:22:17PM **2** bring something up a little bit closer in time, and I'd like you

04:22:22PM **3** to display the GAO report. I'm going to call to your attention,

04:22:30PM **4** and by the way, I'm going to call to your attention the GAO

04:22:37PM **5** report dated September 2007, just nine months ago. Have you

04:22:43PM **6** read this report?

04:22:44PM **7 A.** Yes, sir, I have.

04:22:45PM **8 Q.** And I'll ask you to display, I think it's page three,

04:23:05PM **9** please. You see the portion of that page highlighted?

04:23:10PM **10 A.** Yes, sir.

04:23:11PM **11 Q.** What is the significance of that statement?

04:23:16PM **12 A.** It's just pointing out that because treasury is writing

04:23:20PM **13** checks from time to time it needs to keep some minimum balance

04:23:25PM **14** to avoid overdraft and the debt can't honor overdrafts from the

04:23:30PM **15** federal government so it has to maintain a minimum balance.

04:23:32PM **16 Q.** And how does that relate to your testimony and Mr. Greg's

04:23:39PM **17** testimony concerning the impact of funds being held by the

04:23:47PM **18** government which otherwise would be distributed?

04:23:49PM **19 A.** Well, the treasury has to look very carefully at that

04:23:51PM **20** number, and when it sees that that number might be depressed

04:23:54PM **21** below a reasonable protection against overdraft it has to

04:23:59PM **22** borrow, and if it has extra money it doesn't have to borrow that

04:24:04PM **23** extra money.

04:24:11PM **24 Q.** Which is this benefit that you have?

04:24:13PM **25 A.** It's the benefit to the federal government I mean, yes.

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04:24:15PM **1** **Q.** Now let me just ask you to look at one more portion of this  
 04:24:16PM **2** recent GAO report on page ten. Now, this statement that you're  
 04:24:38PM **3** looking at, how does that relate to what you've just testified  
 04:24:43PM **4** to in terms of the benefit to the government?  
 04:24:46PM **5** **A.** It says basically the same thing in different words.  
 04:24:51PM **6** **Q.** All right. Thank you. I think you may have alluded to  
 04:24:55PM **7** this earlier, but if the government -- if the government is  
 04:25:02PM **8** operating at a surplus, does that obviate the need for  
 04:25:07PM **9** government borrowing?  
 04:25:08PM **10** **A.** No, no. Keep in mind that there are several terms here  
 04:25:14PM **11** that I've found confusing in my own mind sometimes, but there's  
 04:25:21PM **12** debt. That's the amount you owe. That's the amount the federal  
 04:25:25PM **13** government owes. That's a stock concept. And there's deficit  
 04:25:28PM **14** and that's the amount that outlays exceed revenues or revenues  
 04:25:33PM **15** fall short of outlays, and that's been in our history the usual  
 04:25:38PM **16** circumstance. There have been times when we've run a surplus,  
 04:25:42PM **17** but even in times of surpluses the federal government has to  
 04:25:45PM **18** borrow. Now why is that? The reason is that so much of this  
 04:25:48PM **19** debt is churning and turning over every year that you still have  
 04:25:53PM **20** to issue new debt to retire the old debt, so if you're running a  
 04:25:57PM **21** surplus, your Honor, you really have less to turn over but you  
 04:26:02PM **22** still have to keep turning over, so if you have any extra money,  
 04:26:06PM **23** that means that you have to turn over or you have to borrow  
 04:26:11PM **24** less.  
 04:26:11PM **25** **Q.** And as I understand what you're saying, even in times of

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04:28:06PM **1** MR. LEVITAS: The reason, your Honor, I think this is  
 04:28:08PM **2** relevant --  
 04:28:10PM **3** THE COURT: SEC, all those agencies use discouragement  
 04:28:14PM **4** as a remedy, but it's a punitive remedy.  
 04:28:18PM **5** MR. LEVITAS: Well, the point that I want to make is  
 04:28:21PM **6** that, and I have an exhibit I can display to that effect, is  
 04:28:27PM **7** that it's not just a punitive remedy. It's a deterrent, and the  
 04:28:33PM **8** need for a deterrent in this particular matter is something that  
 04:28:39PM **9** the plaintiffs think is very important. There is not going to  
 04:28:44PM **10** be apparently any injunctive ability to bring about trust  
 04:28:48PM **11** reform, and in order to deter the government from continuing the  
 04:28:54PM **12** same type of conduct that has got us to this point, restitution  
 04:28:59PM **13** or discouragement is an appropriate remedy. That's the point  
 04:29:04PM **14** that we will argue to your Honor.  
 04:29:06PM **15** THE COURT: I think I'll pass on that one, counsel.  
 04:29:08PM **16** You can move on. I think the notion of deterring the federal  
 04:29:13PM **17** government with a discouragement claim is delightful to  
 04:29:21PM **18** contemplate, but I don't think Dr. Miller's experience deterring  
 04:29:27PM **19** corporate defendants in the FTC is particularly relevant, so  
 04:29:31PM **20** I'll sustain the objection.  
 04:29:33PM **21** MR. LEVITAS: All right. Your Honor, I have no  
 04:29:34PM **22** further questions.  
 04:29:35PM **23** THE COURT: Thank you, sir.  
 04:29:40PM **24** MR. STEMPLEWICZ: Your Honor, as we indicated, we were  
 04:29:42PM **25** expecting Mr. --

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04:26:16PM **1** budget surplus, these debt instruments that had been issued at  
 04:26:23PM **2** earlier times mature?  
 04:26:25PM **3** **A.** Yes.  
 04:26:25PM **4** **Q.** And they have to be paid off?  
 04:26:27PM **5** **A.** Yes.  
 04:26:27PM **6** **Q.** And in order to do that, if there is not current funds  
 04:26:34PM **7** available, the government needs to borrow funds to do it?  
 04:26:39PM **8** **A.** Exactly. It has to borrow to retire that debt and issue  
 04:26:43PM **9** new instruments in order to keep the government going, and that  
 04:26:48PM **10** is again a benefit to the federal government to have an extra  
 04:26:53PM **11** increment of revenue there.  
 04:26:55PM **12** **Q.** Let me shift gears for a moment and refer you to your  
 04:27:04PM **13** responsibilities as chairman of the Federal Trade Commission.  
 04:27:09PM **14** And the Federal Trade Commission has certain enforcement powers,  
 04:27:16PM **15** certain remedies when it acts to deal with a violation of the  
 04:27:24PM **16** law, whether it's an antitrust violation or something else. And  
 04:27:31PM **17** there are an array of different remedies that can be used. Is  
 04:27:36PM **18** that correct?  
 04:27:37PM **19** **A.** Yes.  
 04:27:38PM **20** **Q.** All right. Now, in the course of your chairmanship, are  
 04:27:45PM **21** you aware whether or not restitution and discouragement was one  
 04:27:52PM **22** of the remedies used by the FTC?  
 04:27:55PM **23** MR. STEMPLEWICZ: Objection; relevance.  
 04:28:00PM **24** THE COURT: I'll sustain that. I don't know what the  
 04:28:03PM **25** FTC's discouragement --

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04:29:44PM **1** THE COURT: Flatfooted, right.  
 04:29:48PM **2** MR. STEMPLEWICZ: Exactly. We request the ability to  
 04:29:50PM **3** continue or do our cross-examination starting tomorrow.  
 04:29:54PM **4** THE COURT: Dr. Miller, you live in town, don't you?  
 04:29:57PM **5** THE WITNESS: We have an apartment downtown. I live  
 04:29:58PM **6** out in Rapihy County, but we have an apartment here.  
 04:30:03PM **7** THE COURT: Well, the traffic on the way out there  
 04:30:05PM **8** tonight is terrible anyway. We'll reconvene tomorrow morning at  
 04:30:09PM **9** 9:30.  
 04:30:10PM **10** By the way, counsel, Wednesday morning of this week I  
 04:30:16PM **11** have a criminal matter that I've got to take care of that  
 04:30:21PM **12** probably is going to take most of the morning and I think it  
 04:30:24PM **13** would be sensible for us to convene after lunch on Wednesday  
 04:30:28PM **14** instead of the morning, so consider that in your planning.  
 04:30:34PM **15** MR. DORRIS: There's one more matter I need to make  
 04:30:36PM **16** the Court aware of, your Honor. As indicated when we called Mr.  
 04:30:40PM **17** Miller, sometimes things in this court move faster than  
 04:30:44PM **18** expected. Our final witness that we were planning to call after  
 04:30:48PM **19** we have some other witnesses after Mr. Miller was Mr. Palace,  
 04:30:52PM **20** and he is only available to come in late Tuesday night and be  
 04:30:58PM **21** available Wednesday morning or Wednesday at one. With the pace  
 04:31:02PM **22** things are going, we could see that we would run out of  
 04:31:05PM **23** witnesses tomorrow and that there would be a gap before Mr.  
 04:31:10PM **24** Palace would be available. We could certainly let the  
 04:31:13PM **25** government begin and call Mr. Palace in our rebuttal case.

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04:31:17PM **1** THE COURT: Don't shake your head. You've got lots of  
 04:31:20PM **2** witnesses. See if you can get ready a witness for tomorrow.  
 04:31:23PM **3** MR. KIRSCHMAN: Your Honor, we would like to put on  
 04:31:24PM **4** our witnesses after we've heard Plaintiffs' case. We're  
 04:31:27PM **5** responding to Plaintiffs' case.  
 04:31:29PM **6** THE COURT: I know. I understand that, but we can  
 04:31:34PM **7** handle that. You've got to have a couple of witnesses that we  
 04:31:39PM **8** can hear. Do your best. Okay. Make a good faith effort. I  
 04:31:43PM **9** hate to quit early all the time.  
 04:31:47PM **10** MR. KIRSCHMAN: Your Honor, if I may, I don't want to  
 04:31:50PM **11** object frequently, but when we have a witness list that says  
 04:31:54PM **12** four hours for each of these witnesses and they run 45 minutes  
 04:31:57PM **13** and 30 minutes, that's trial by ambush. That's not a good faith  
 04:32:02PM **14** estimate. Thirty minutes or an hour for a witness who was  
 04:32:05PM **15** supposed to testify for four? It's hard to prepare a case.  
 04:32:09PM **16** THE COURT: I'm terribly disappointed that this  
 04:32:11PM **17** witness, this four-hour witness took an hour-and-a-half, but  
 04:32:20PM **18** you've been before me before. You know how things move. Let's  
 04:32:24PM **19** adjust. See if you can bring a witness in tomorrow. If you  
 04:32:28PM **20** can't, if you make a good faith effort and can't think of a  
 04:32:31PM **21** single witness to plug the gap tomorrow I'll let you off, but  
 04:32:35PM **22** I'm counting on you, Mr. Kirschman.  
 04:32:38PM **23** MR. KIRSCHMAN: We will have a witness for you, your  
 04:32:40PM **24** Honor.  
 04:32:40PM **25** THE COURT: All right. Good. Thank you. See you  
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04:32:42PM **1** tomorrow morning at 9:30.  
**2** (Proceedings adjourned at about 4:33 p.m.)  
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**18** DX 465 155  
**19** PX 29 175  
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**1** CERTIFICATE  
**2** I, JACQUELINE M. SULLIVAN, Official Court Reporter,  
**3** certify that the foregoing pages are a correct transcript from  
**4** the record of proceedings in the above-entitled matter.  
**5**  
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 JACQUELINE M. SULLIVAN  
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